TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 9

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED MARCH 20, 1935.

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[fol. 1] [File endorsement omitted]

[fol. 2]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

No. 767

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, Complainant,

vs.

THE UNITED STATES OF AMERICA, Defendant

COMPLAINT IN EQUITY—Filed Aug. 30, 1934

To the Honorable, the Judges of said Court:

Atlanta, Birmingham & Coast Railroad Company brings this its bill against United States of America, and humbly complaining, respectfully avers:

First

Your Orator is a corporation organized and existing under the laws of the State of Georgia. It is a common carrier by railroad within the meaning of the Act to Regulate Commerce, approved February 4, 1887, and the amendments thereto. Its principal office and place of business, including its executive and accounting offices, are in the City of Atlanta, Fulton County, Georgia, which is in the Northern District of Georgia. Your Orator owns and operates about 640 miles of railroad lines in the States of Alabama and Georgia.

[fol. 3] Second

This is a suit of a civil nature in equity. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand ($3000) Dollars and arises under the Constitution and Laws of the United States, and it is a proceeding under the Act of Congress known as the Urgent Deficiencies Act, approved October

22, 1913 (38 Stat. 219), and the Commerce Court Act approved June 18, 1910 (36 Stat. 539), and the Interstate Commerce Act and amendments thereto.

This controversy involves the opening entries in your Orator's account 701 "Investment in Road and Equipment," prescribed by order of the Interstate Commerce Commission, dated July 9, 1934, entered in its docket number 25170. Your Orator seeks to enjoin the operation of said order. The figures which the said order undertakes to require your Orator to enter in said account, are, except for minor bookkeeping corrections, the same as those which were enjoined by a decree of a specially constituted District Court for the Northern District of Georgia, which said Court was composed of Honorable Richard W. Walker, United States Circuit Judge, and Honorable Samuel H. Sibley and Honorable Benjamin C. Dawkins, United States District Judges; which last mentioned order was dated October 26, 1928, in a proceeding in equity entitled "Atlanta, Birmingham & Coast Railroad Company v. United States of America" then pending in the United States District Court for the Northern District of Georgia, Atlanta Division. Said cause is reported in 28 Federal Reporter (2d) 885. Said figures are also the same, except for the corrections above mentioned, as those prescribed in the report of said Interstate Commerce Commission, dated October 9, 1929, and likewise enjoined by decree of said District Court entered on supplemental bill and dated January 8, 1930 [37 Fed. (2d) 401]. This last mentioned decree of said [fol. 4] District Court of the United States was reversed by the Supreme Court of the United States (282 U. S. 522) on the ground that the action of the Commission there involved, to-wit: that of October 9, 1929, was not, within the meaning of the controlling statutes, an order.

Third

Your Orator is the successor corporation under the laws of Georgia, to Atlanta, Birmingham & Atlantic Railway Company, your Orator's charter having been granted by the State of Georgia, upon petition to the Honorable, the Secretary of State of the State of Georgia, filed on the 22nd day of November, 1926, under and by virtue of the Second Title, Chapter 2, Article 6 of Section 1, Division 3 of the Code of Georgia of 1910, and especially Section 2585, Sub-

divisions 11 and 12 of the said Code of Georgia; and in pursuance of an Act of the General Assembly of the State of Georgia approved December 7, 1892, and the Act amendatory thereof approved December 15, 1894, and an Act of the General Assembly approved August 1, 1922, and an Act of the General Assembly approved August 22, 1925, and an Act of the General Assembly approved August 30, 1926. The petitioners for the said charter were the purchasers of the property of the said Atlanta, Birmingham & Atlantic Railway Company, a corporation under the laws of Georgia, which said property had been, as hereinafter more fully set forth, conditionally sold to the said purchasers on the 22nd day of June, 1926, pursuant to a certain decree of foreclosure and sale made in the cause entitled "Birmingham Trust & Savings Company, Complainant against Atlanta, Birmingham & Atlantic Railway Company, Defendant, Consolidated Cause in Equity No. 156," and the constituent causes in equity Nos. 156, 187, 188 and 190, which said decree of foreclosure and sale was entered on the 30th day of April, 1926, by this Honorable Court and thereafter [fol. 5] adopted, rendered and pronounced as the Decree of the United States District Court for the Southern District of Georgia, and as the Decree of the District Court of the United States for the Middle District of Georgia, and as the Decree of the United States District Court for the Northern District of Alabama, and as the Decree of the District Court of the United States for the Southern District of Florida. By certain decree made in the said above entitled cause on November 16, 1926, under the circumstances hereinafter set out, the sale of the said property to the said purchasers was unconditionally confirmed.

The statute of the State of Georgia under which your Orator was chartered and organized permitted the purchasers of a railroad property at foreclosure sale, their associates or assigns, to organize anew by filing a petition with the Secretary of State, requesting to be substituted for the original petitioners and stockholders with all other powers, rights, privileges, duties and liabilities under the aforementioned Article of the Code of Georgia, as is hereinafter more fully set out.

Fourth

For some years prior to February 23, 1926, the properties of the Atlanta, Birmingham & Atlantic Railway Com-

pany had been in the Receiver's hands, operated by the Receiver appointed by this Honorable Court. The property was admittedly insolvent and there was no prospect of sale of said property for an amount sufficient to satisfy the bonds outstanding and secured by mortgages on said property. On the said 23rd day of February, 1926, an agreement was entered into between a committee of the Bondholders of said Atlanta, Birmingham & Atlantic Railway Company, acting under a Deposit Agreement of December 7, 1921, with respect to the 15 year 5% Income Mortgage Gold Bonds of Atlanta, Birmingham & Atlantic Railway Company, and a Committee acting under a Bondholders' [fol. 6] Agreement of September 26, 1921, in respect to the First Mortgage 5% 5-30 Gold Coupon Bonds of Atlantic & Birmingham Railway Company on the one part and Atlantic Coast Line Railroad Company on the other part. The said agreement contemplated the sale of the properties of Atlanta, Birmingham & Atlantic Railway Company, being the same property now owned by your Orator, which said sale, it was expected, would be made under and pursuant to a decree of foreclosure in said cause. Under the said Agreement of February 23, 1926, subject to necessary approval by this Court, and by the Interstate Commerce Commission, it was agreed that there should be formed a new company which would acquire the properties of the said Atlanta, Birmingham & Atlantic Railway Company through the foreclosure proceedings then pending in this Honorable Court. It was also agreed, as aforesaid, that the new company so to be organized should, in payment for the property so to be acquired by it from the purchasers at said foreclosure sale, issue approximately $5,180,000.00 of its preferred stock and 150,000 shares of its no-par voting common stock. The preferred stock was, under the plan contemplated by the said agreement, to be accepted by the bondholders aforesaid in exchange for bonds of the said Atlantic & Birmingham Railway Company and bonds of the said Atlanta, Birmingham & Atlantic Railway Company at the rate of $60.00 of preferred stock for each $100.00 of such bonds. The said voting common stock was to be assigned and transferred to said Atlantic Coast Line Railroad in consideration of the payment by that Company of certain debts of the Atlanta, Birmingham & Atlantic Railway Company set up in Exhibit A attached to said Agreement of

February 23, 1926, constituting liens on the property of said company prior to the said bonds.

Your Orator is the New Company which was contemplated by the said Agreement of February 23, 1926, having [fol. 7] been organized under the laws of the State of Georgia as contemplated by said agreement, and has acquired the said properties of the Atlanta, Birmingham & Atlantic Railway Company and in payment therefor, has issued its common and preferred stock in the manner and under the circumstances hereinafter set forth.

Fifth

After making said Agreement of February 23, 1926, above referred to, said bondholders duly formed a Reorganization Committee, which said committee on April 8, 1926, duly filed with the Interstate Commerce Commission, on behalf of your Orator yet to be organized, an application pursuant to Subdivision 18 of Section 1 and Subdivision 2 of Section 20a of the Interstate Commerce Act. In said application it was stated in part:

"Second: The Applicant is to be organized under the laws of the State of Georgia or of such other state as the Reorganization Committee may, with the approval of the Commission, determine, for the purpose, among other things, of acquiring and operating the lines of railroad and other properties of the Atlanta, Birmingham & Atlantic Railway Company (hereinafter called the Old Company) and its Receiver, pursuant to said Plan and Agreement of Reorganization dated February 23, 1926, for the reorganization of the Old Company. Said Plan and Agreement (hereinafter called the Plan) will be presented at the hearing of the application."

• • • • • • •

"Fourth: This application is

(a) for a certificate pursuant to Subdivision 18 of Section 1 of the Interstate Commerce Act that the present or future public convenience and necessity require or will require that the Applicant acquire and operate the lines of railroad and other properties of the Old Company and of [fol. 8] its Receiver, as aforesaid, and engage in transportation over and by means of the same;

(b) for the authorization, pursuant to Subdivision 2 of Section 20a of the Interstate Commerce Act, of the issue by the applicant of $5,180,344.07 par value of its preferred stock and 150,000 shares without par value of its common stock in accordance with the provisions of the Plan; and

(c) for any other action required to facilitate the consummation of the Plan.

"Fifth: The purposes and uses of the proposed issue of capital stock are to acquire the lines of railroad and other properties of the Old Company and its Receiver, as aforesaid, and to carry out the Plan."

On April 12, 1926, Atlantic Coast Line Railroad Company filed its application in accordance with the terms of the said Interstate Commerce Act for authority to acquire control of Applicant by the purchase of all of its voting common stock and for authority to assume the obligations by it required to be assumed in accordance with the terms of said Agreement of February 23, 1926.

Sixth

After the filing of said application with the Interstate Commerce Commission there was duly entered in this Honorable Court a Decree of Foreclosure and Sale of the properties of the Atlanta, Birmingham & Atlantic Railway Company, said decree being dated April 30, 1926. There was also submitted to and approved by this Honorable Court the Agreement of February 23, 1926, and the Plan and Agreement for the reorganization of the Atlanta, Birmingham & Atlantic Railway Company. Pursuant to said Decree of Foreclosure and Sale, a sale was held on Tuesday, June 22, 1926, at which sale George E. Roosevelt and J. A. Fowler, Jr., acting as a Purchasing Committee for the said Reorganization Committee under the said Plan and Agree- [fol. 9] ment of Reorganization of February 23, 1926, were the highest and only bidders for the property and assets described in the said Decree of Foreclosure and Sale, and a decree was duly entered confirming the sale on condition that the bid made by the said Purchasing Committee:

"• • • shall be and become final, effective and binding only in the event that the Interstate Commerce Com-

mission shall within a time which, in the opinion of the said Court, is reasonable, make an order or orders pursuant to the application on behalf of the Atlanta, Birmingham and Coast Railroad Company (I. C. C. Finance Docket 5454), and in the application of the Atlantic Coast Line Railroad Company (I. C. C. Finance Docket 5470), conferring authority sought in said applications substantially sufficient to enable the parties thereto to carry out the Plan and Agreement of Reorganization therein set out, and heretofore submitted to and approved by the said United States District Court for the Northern District of Georgia, Northern Division, and upon the further condition that in the event said Commission refuses the authority sought in said applications, or does not enter an order granting the same within a time which, in the opinion of said Court, is reasonable, then said bidders may, at their option, withdraw their bid and receive their qualifying deposit; and that in no event shall said bidders be required to accept any conveyance of the property sold, or make any payment under their bid, or said Decree of Forceclosure and Sale, unless and until the said Interstate Commerce Commission shall have granted the authority sought in said applications in the manner aforesaid."

Seventh

Subsequent to the above action by this Honorable Court, the applications filed as aforesaid by the Bondholders' Committee and Atlantic Coast Line Railroad Company came on to be argued before the Interstate Commerce Commission on or about July 14, 1926. In the course of this argument [fol. 10] the Commission was advised of the facts above set out and under date of October 26, 1926, the Commission entered its Report and Order in F. D. 5454, this being the number assigned to the application filed by the Bondholders' Committee. The said Report and Order also embraced F. D. 5470, covering the application filed by Atlantic Coast Line Railroad Company. In its said Report the Interstate Commerce Commission stated:

"There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line Railroad Company is in the public interest."

The Commission also stated:

"We find that the public convenience and necessity require the acquisition and operation of the lines of the A. B. & A. by the Reorganization Committee and the New Company, and a certificate will be issued to that effect to take effect after 30 days. The New Company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the New Company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the New Company, accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order."

Eighth

A copy of this Report and Order was duly filed with this Honorable Court in the foreclosure proceeding, above referred to, then pending before this Court. The condition, subject to which the bid of the Purchasing Committee had [fol. 11] been made, was withdrawn and under date of November 16, 1926, this Court ordered, among other things—

"That the bid of George E. Roosevelt, and J. A. Fowler, Jr., acting as a Purchasing Committee on behalf of Francis R. Hart, George E. Warren, James H. Perkins, and George E. Roosevelt, as the Reorganization Committee under said Plan and Agreement, be and hereby is in all respects accepted, approved, ratified and confirmed absolutely, finally and unconditionally."

Pursuant to said order and under date of November 16, 1926, Albert G. Foster, Special Master, Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, Receiver, Old Colony Trust Company, Trustees, and Irving Bank-Columbia Trust Company, Trustees, executed and delivered a deed, conveying to George E. Roosevelt and J. A. Fowler, Jr., as Purchasers, all of the properties of Atlanta, Birmingham & Atlantic Railway Company therein fully mentioned

and described, subject, however, to the liens, conditions, rights and liabilities in said deed referred to. After the conveyance aforesaid the said purchasers and their associates, acting under and in accordance with the provisions of the Second Title, Chapter 2, Article 6, etc., filed with the Secretary of State of the State of Georgia, the petition hereinbefore described for the incorporation of your Orator, and pursuant thereto the Honorable, the Secretary of State of the State of Georgia, as provided in said statutes of the State of Georgia, granted unto the said purchasers and associates, their successors and assigns, "the powers, privileges and franchises of a corporation, with full authority by and under the name of Atlanta, Birmingham & Coast Railroad Company, to exercise the powers, privileges and franchises, immunities and advantages conferred by law in such cases and those prayed for in said petition for incorporation and to maintain and operate the said railroad as prayed for, etc."

[fol. 12]

Ninth

After the granting of said certificate of incorporation your Orator, Atlanta, Birmingham & Coast Railroad Company, under date of November 25, 1926, duly filed its application before the Interstate Commerce Commission in said F. D. 5454 and adopted as its own the application dated April 8, 1926, filed by the Reorganization Committee as aforementioned and as exhibits with its said application your Orator filed the papers required by the Interstate Commerce Commission, including its Petition for Incorporation of the said certificate of the said Secretary of State of the State of Georgia. By its said charter your Orator was specifically authorized to issue "all or any part of its preferred stock and/or common stock for the purpose of acquiring and paying for the property and assets conveyed to it by the Deed of November 16, 1926, above referred to, and for the purpose of carrying out the above mentioned Plan and Agreement of Reorganization dated February 23, 1926."

Tenth

After the filing by your Orator of the said supplemental application and after the filing by Atlantic Coast Line Railway of its supplemental application in F. D. 5470, above referred to, the Honorable Interstate Commerce Commis-

sion, under date of December 21, 1926, entered its second report and order in said F. D. 5454, which said report and order also embraced F. D. 5470, aforesaid, this report and order being the supplementary report and order referred to by the Commission in its Order of October 26, 1926, above referred to. In its second report the Commission stated:

"The applications will be granted, subject, however, to the conditions that the Atlanta, Birmingham & Coast Railroad Company, in setting up its investment account, shall not include therein any amount in excess of the par value [fol. 13] of the preferred capital stock authorized to be issued and the amount actually received in consideration of the issuance of its no-par common stock."

The said second Order, entered pursuant to said Report, dated December 21, 1926, was, in part, as follows:

"• • • Provided, however, and authority to issue said stock is granted upon the express condition that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis *not in excess of the amount received therefor.*" (Italics ours.)

Eleventh

Pursuant to the authority granted by the Commission in the Reports and Orders of October 26, 1926, and December 21, 1926, and as of January 1, 1927, the purchasers aforesaid, the said George E. Roosevelt and J. A. Fowler, Jr., conveyed to your Orator all of the property acquired by them under the Deed of November 16, 1926, from the Special Master, above referred to, in consideration for which your Orator issued and delivered to the Bondholders' Committee certificates for $5,180,300.00 par value of its preferred stock and at the direction and on behalf of the said Bondholders' Committee, issued to Atlantic Coast Line Railroad Company certificates for 150,000 shares of the voting, no-par common stock of your Orator—but only after Atlantic Coast Line Railroad Company had paid or pro-

vided for the payment by it to the creditors of the Atlanta, Birmingham and Atlantic Railway Company, of the items referred to in the Agreement of February 23, 1926, constituting liens having priority over the bonds as hereinbefore set forth.

[fol. 14] Twelfth

Your Orator avers that as the result of the transactions set out above, it received title to the property of the old Atlanta, Birmingham & Atlantic Railway Company and its receiver, free and clear of all liens and encumbrances whatsoever.

Thirteenth

Subsequent to the transactions above set out and on June 20, 1927, your Orator transmitted to the Bureau of Accounts, Interstate Commerce Commission, a proposed balance sheet in which the figures set up in its Account 701, Investment in Road and Equipment, were based on estimates made by the Interstate Commerce Commission in its Valuation Docket No. 1, covering cost of reproduction of the property of the old Atlanta, Birmingham & Atlantic Railway Company as of June 30, 1914, plus the net of additions and retirements to December 31, 1926. The proposed balance sheet was rejected by the said Bureau of Accounts by letter of August 3, 1927, copy of which is filed herewith as Exhibit "A".

The requirement as to the opening entries set out in the said letter of said Bureau of Accounts herewith filed as Exhibit "A", was in all respects affirmed, ratified and adopted by the Interstate Commerce Commission by its order of April 9, 1928.

Thereupon, your Orator filed its bill of complaint in the above mentioned proceedings in the District Court of the United States for the Northern District of Georgia, Atlanta Division, in Equity No. 497, and also filed in said court a certified copy of the record before the Interstate Commerce Commission up to that time in its Finance Dockets 5454 and 5470, which are the dockets in which had occurred the proceedings there complained of.

Fourteenth

Thereafter, the said proceedings, in Equity No. 497, came [fol. 15] on to be heard before the court and under date of

October 26, 1928, the Court entered its opinion and in accordance therewith decreed that the equities were with your Orator and that the said order of April 9, 1928, in so far as the same fixed the amount at which your Orator was required to return its capital stock and its investment in Road and Equipment, should be set aside and that all parties interested in the enforcement of said order and their officers and agents be permanently enjoined from enforcing same. The said opinion of the Court is published in 28 Fed. (2d) 885.

Fifteenth

Thereafter, the Interstate Commerce Commission set down for hearing the matters involved in said Finance Dockets 5454 and 5470 and under date of October 9th, 1929, made public and served its report wherein it prescribed as opening entries in your Orator's Road and Equipment and Capital Stock accounts identically the same figures, the use of which had been enjoined by the said District Court of the United States by its decree of October 29, 1928, above referred to. Said report is published in the official reports of said Commission—158 I. C. C. page 6.

Sixteenth

Your Orator thereupon filed in said District Court in said Equity proceeding No. 497, its supplemental bill praying that requirement of the said Commission as to the figures to be set upon your Orator's books be enjoined. Thereafter, and under date of January 18, 1930, the said District Court of the United States, after hearing rendered its opinion and entered thereon its decree wherein the court again enjoined the requirement that your Orator set up on its books as its opening entries the figures prescribed by the said October 9, 1929, report of the Interstate Commerce Commission.

[fol. 16] Seventeenth

Thereupon, the said United States of America and Interstate Commerce Commission, intervenor in said suit, appealed to the Supreme Court of the United States from said decree of January 18, 1930, and the said Supreme Court decided that the action of the Commission of October 9, 1929, was not an order and that, therefore, the said District

Court was without authority to revise same and directed that the said supplemental bill be dismissed.

Eighteenth

Thereafter, on or about November 27, 1931, Alexander Wylie, Director of the Bureau of Accounts of the Interstate Commerce Commission, wrote a letter to the Auditor of your Orator, calling attention to the decision of the Supreme Court above referred to and asking, "Will you please advise what action will be taken to restate your Company's investment in Road and Equipment to conform to the effective accounting regulations of the Commission as contended by it?" In reply to this letter your Orator's president called attention to the fact that the decision of the Supreme Court was based upon the finding that the report of October 9, 1929, was not an order, that the previous order of April 9, 1928, had been enjoined, and therefore, "In the absence of a further order, there is no 'mandate' requiring this Company to change the set-up on its books. Until the Commission issued such a mandate there is no reason why we should change the figures shown in our annual reports to the Commission, including those for the year ending December 31, 1930, which reflect the amount of our investment in Road and Equipment.

Whereupon, in continuation of the controversy, by its order of March 26, 1932, in a docket numbered 25170, the Commission, on its own motion and without formal pleadings, entered upon an inquiry and investigation as to the [fol. 17] methods employed by Atlantic Coast Line Railroad Company in accounting for its investment in the common stock of your Orator and the methods employed by your Orator in accounting for its liability for common stock issued and for its investment in Road and Equipment.

Nineteenth

When the matter came on for hearing before the Interstate Commerce Commission your Orator stated that all the matters involved in Docket 25170 had therefore been determined by the action of the said District Court of the United States for the Northern District of Georgia, Atlanta Division, in said Equity proceeding No. 497, above referred to, with the exception of the question as to the value of the

property of the old Atlanta, Birmingham & Atlantic Railway Company which was conveyed, free of liens, to your Orator in January, 1927, by representatives of the Reorganization Committee of the Old Company in consideration for the entire capital stock, common and preferred, of your Orator. Your Orator avers that that statement was and is true and correct. The representatives of the Interstate Commerce Commission did not admit that any questions had been settled by the said opinions and decrees of the said District Court of the United States for the Northern District of Georgia, Atlanta Division, in said Equity proceeding No. 497. Thereupon, after formal objection of your Orator had been overruled said hearing continued, and at this hearing your Orator and said Atlantic Coast Line Railroad Company introduced witnesses who testified and introduced exhibits, and a witness for the Interstate Commerce Commission testified.

The hearing in Docket No. 25170 was completed in July, 1932. Under the practice in force the Examiner of the Interstate Commerce Commission was to make a report proposed. No such report proposed was made until February, 1934. Near the end of 1933 representation was made on [fol. 18] behalf of your Orator to certain members of the Interstate Commerce Commission that it was impracticable for your Orator to continue without making opening entries on its books. In view of these representations said members of the Interstate Commerce Commission stated that the making of opening entries would not be considered improper, but that the Commission was not to be considered as in any way or to any extent approving the figures that might be used in making such entries. Pursuant to this, opening entries have been made by your Orator at figures which are in excess of those prescribed in said order of July 9, 1934.

Thereafter, and under date of July 9, 1934, and with knowledge of the entries made by your Orator, the said Interstate Commerce Commission filed its report and entered its order in said Docket No. 25170, a copy of which report and order is hereto attached as Exhibit "B".

Twentieth

Your Orator avers that under the April, 1928, order of the Interstate Commerce Commission which was enjoined

by the decree of the District Court of the United States for the Northern District of Georgia, Atlanta Division, of October 26, 1928, the figures required to be set up in the Road and Equipment account and in the capital stock accounts of your Orator were as follows:

Road and Equipment	$7,080,873.79
Other Assets—Net	2,180,126.01
Total Assets	$9,260,999.80
Capital Stock:	
Preferred Stock	$5,180,300.00
Common Stock	4,080,699.80
	$9,260,999.80

[fol. 19] By reason of certain corrections which the Commission now, in said Docket No. 25170, finds to be proper, it directs the change of figure representing "Other Assets" from $2,180,126.01 to $2,698,817.73.

By reason of the substitution of actual payments by Atlantic Coast Line Railroad Company for estimated payments on account of the items having priority over the claims of the bondholders of the Old Company (Atlanta, Birmingham & Atlantic Railway Company) the Commission now finds that the cost to the Atlantic Coast Line Railroad Company for the common stock of your Orator was $4,248,413.76 instead of the above mentioned $4,080,699.80 estimated at the time of the said decree of the said United States District Court of the United States for the Northern District of Georgia, Atlanta Division, dated October 29, 1928.

On the basis of these corrections the Commission by its order of July 9, 1934, in Docket No. 25170, now requires that your Orator shall set up in its Road and Equipment and Capital Stock accounts the following figures:

Road and Equipment	$6,729,896.03
Other Assets	2,698,817.73
Total	$9,428,713.76
Capital Stock Account:	
Preferred Stock	$5,180,300.00
Common Stock	4,248,413.76
Total	$9,428,713.76

Twenty-first

Your Orator avers that the said order of the Interstate Commerce Commission of July 9, 1934, in said Docket No. 25170 is based on findings which are the exact reverse of the facts as found by the District Court of the United States [fol. 20] for the Northern District of Georgia, Atlanta Division, in said Equity proceeding No. 497, to which proceeding the Interstate Commerce Commission was a party; and that the findings of fact heretofore made by said District Court, so far as they involve facts concerning the transfer to your Orator of the railroad properties formerly belonging to Atlanta, Birmingham & Atlantic Railway Company and its receivers, were made upon a record which, so far as it concerns these facts, is in no material particular different from the record in Docket No. 25170.

Twenty-second

Your Orator avers that the Interstate Commerce Commission, in its said report and order of July 9, 1934, has wholly disregarded and has refused to give effect to the findings of fact made by the District Court of the United States for the Northern District of Georgia, Atlanta Division, as set out in its opinions dated October 26, 1928, and January 18, 1930, and filed in said Equity proceeding No. 497—"Atlanta, Birmingham & Coast Railroad Company vs. United States of America"; that the findings of fact now made by the Commission, as set out in its report of July 9, 1934, are contrary to and the exact reverse of the findings of fact made by the said District Court of the United States in its said opinions and decree above referred to, and are contrary to and the exact reverse of the uncontradicted testimony of the witnesses, familar with the facts, in said Docket No. 25170, in the following particulars:

(a) The Commission finds that the property of the old Atlanta, Birmingham and Atlantic Railway Company, purchased at foreclosure, by the representatives of the Bondholders' Committee, was conveyed by said Bondholders' representatives to your Orator subject to the debts of the Old Company and its Receiver having priority over the [fol. 21] bonds; whereas, the said District Court of the United States has found on the record before it, and the

testimony of witnesses in said Docket 25170 shows beyond question that your Orator received the said property free of debts, and that prior to the conveyance of the said property to your Orator, Atlantic Coast Line Railroad Company had paid or provided the receiver of the Atlanta, Birmingham & Atlantic Railway Company with cash with which to pay all of said debts except a very minor amount represented by equipment trust obligations of the receiver which had not matured, and as to these obligations, Atlantic Coast Line Railroad Company, prior to said conveyance, formally assumed the payment of same as and when they did mature and that Atlantic Coast Line Railroad Company paid same in cash at maturity.

(b) The Interstate Commerce Commission in its report in said Docket No. 25170 finds that your Orator did not issue all of its stock, common and preferred, to the Bondholders' representatives in consideration of the conveyance to your Orator of the property of the old Atlanta, Birmingham and Atlantic Railway Company and its receiver; whereas, the said District Court of the United States in said Equity proceeding No. 497 finds as a fact that your Orator received for its stock, common and preferred, the deed of the Bondholders' representatives covering the railroads and such bondholders' representatives in turn sold the common stock to Atlantic Coast Line Railroad Company.

(c) The Commission finds that Atlantic Coast Line Railroad Company did not receive the common stock of your Orator from the Bondholders' representatives, but received same from your Orator in consideration of the payment by said Atlantic Coast Line Railroad Company of priorities subject to which the said Commission says your Orator took the deed to its properties.

(d) The Interstate Commerce Commission finds as a [fol. 22] fact that your Orator received, or received the benefit of the $4,248,413.76 paid by the Atlantic Coast Line Railroad Company in extinction of the "the priorities," whereas the testimony before the Commission in Docket No. 25170 shows, and the said District Court of the United States for the Northern District of Georgia, Atlanta Di-

vision, has found as a fact on the record before it, that your Orator did not receive and under the reorganization plan could not receive a dime of money but only a deed to the railroads.

Twenty-third

Your Orator avers that the order of the Interstate Commerce Commission entered in Docket No. 25170 is without support in the record in said docket, is contrary to all of the evidence in the said docket and is therefore arbitrary and void.

Twenty-fourth

Your Orator avers that under the said order of said Interstate Commerce Commission of July 9, 1934, in Docket No. 25170, your Orator is required to set up its Road and Equipment at something less than $7,000,000. Your Orator avers that the uncontradicted testimony in the record in Docket No. 25170 shows that the equipment acquired by your Orator in January, 1927, was then worth the sum of approximately $3,000,000. If this amount be deducted from the $7,000,000, the figure at which approximately your Orator is required to set up in Road and Equipment, there will remain only about $4,000,000 to cover the 640 miles of railroad and all the property acquired by your Orator in January, 1927.

The record in this case shows that your Orator acquired in January, 1927, title to lands in Atlanta, Ga., and Birmingham, Ala., which lands were as of that date worth at least $6,000,000. Your Orator therefore avers that the figure which the Interstate Commerce Commission by its order now required to be set up on its books as repre- [fol. 23] senting its entire road and equipment, will not provide any figure to represent the investment of your Orator in the 640 miles of railroad.

Your Orator avers that the record before the Interstate Commerce Commission in said Docket No. 25170 establishes the fact that the properties acquired by your Orator in January, 1927, free of all liens, was of such value as to justify your Orator in setting up the same in its Road and Equipment account at a figure greatly in excess of the figure prescribed in said order of July 9, 1934.

Twenty-fifth

Your Orator avers that if opening entries are made on its books at the figures prescribed by the order of the Interstate Commerce Commission of July 9, 1934, in said Docket No. 25170, it will be impossible thereafter to set up on said books proper accounts showing the facts with reference to depreciation of said property, or any other facts with reference to said property of the character generally and properly shown on books of railroads, or to keep its accounts so as to be, at the same time, in accord with said entries and with the facts which must be recorded on said books; and this for the reason that the figures prescribed by the said Commission have no reference whatever to any investment made by your Orator in its Road and Equipment.

Twenty-sixth

Under the provisions of Section 19a of the Act to Regulate Commerce, the Interstate Commerce Commission fixed the value as of June 30, 1914, of the property subsequently acquired by your Orator, at the sum of $22,832,107. When that value so fixed by the Commission has been adjusted by additions, betterments and retirements up to January 1, 1927, it is greatly in excess of the amount fixed by the Com-
[fol. 24] mission's order of July 9, 1934, and the said amount so fixed could have been arrived at only by disregarding the Commission's own valuation.

Twenty-seventh

The said order of July 9, 1934, is by its terms to take effect and be in force from and after 30 days from the date of service thereof. A copy of said order was received by your Orator through the United States mail on the 10th day of August, 1934. Your Orator is advised that said order is effective thirty days after August 6, 1934.

Twenty-eighth

Accounting is not a mere matter of form, but one of substance. It sets forth the condition of public carriers for the information of their stockholders and creditors, and the investing public, as well as for that of the Commission. It furnishes the basis for corporate financing, and many other

matters affecting their very existence. Your Orator is entitled, therefore, not to be subjected to the accounting order of the Commission dated July 9, 1934, because it transcends the power of the Commission and is arbitrary and unreasonable, in that it requires your Orator to set up on its books an amount which bears no relation to its investment and is less than the true value of its property.

Twenty-ninth

In the report of the Commission on which the order here sought to be enjoined is based, it is said, "Cost of reproduction is to be given little, if any, weight in determining such value in the absence of evidence that a reasonably prudent man would purchase or undertake the construction of the properties at such figures." It is evident from the above finding and the report as a whole that the Commission gave no weight to the cost of reproduction, to the [fol. 25] valuation placed upon the property by its own experts, or to any other elements of value, and the order is therefore in conflict with the decision of this Court as set out in 37 Fed. Rep. (2d) on page 403, where it is held: "It follows that the Commission's conclusion that this valuation was 'neither pertinent nor material evidence in the determination of investment' was erroneous in this case, where the investment was not of cash but must be determined by the ascertainment of value. A fair estimate of the value of the property on January 1, 1927, would require consideration not only of the cash dealings at that time respecting it and of the conditions then surrounding its use, but also of the original cost or value of it."

Thirtieth

Your Orator avers that the said order of the Commission issued July 9, 1934, is, for each and all of the reasons hereinbefore set out, and for the reasons hereinafter set forth, unlawful, unjust and unreasonable, for that—

(a) It disregards and discards the facts found by this court in the cases between the same parties and involving the same subject matter.

(b) It disregards and departs from the law applicable to this case as declared by this court, in that it directs the use of a figure as representing the value of the property

acquired by your Orator, as consideration for its stock, which has been specifically enjoined by this court, and also in that the figure required to be set up in the accounts of your Orator as representing the said value is not the current cash value of said property, as required by this court.

(c) The figure required to be set up has been found by this court to be in conflict with the provisions of Account 41 of the Commission's classification of accounts, and in conflict with the provisions of the Condition attached by the Commission to its authority to issue said stock.

[fol. 26] (d) There is no evidence in this record to support the use of the figure $9,428,713.76, as the value of the property which this court has found was received by your Orator for its stock.

(e) The figure required to be set up as the value of the property received by your Orator is contrary to the uncontradicted evidence in the record.

(f) The figure required to be set up, to-wit, $9,428,713.76 * * * is in plain conflict with and contrary to the act of Congress fixing the prima facie value of such property at the figure found by the Commission as the result of its investigation under the provisions of section 19a of said act.

(g) The figure fixed by the Commission, to be set up as the cost or investment of your Orator in its property and investment account, does not purport to be or represent the cost of said property but, on the contrary, is admittedly the figure at which the owners of the stock of your said Orator sold the same to the present holders thereof, and this court has found and held that your Orator did not receive the same or any part thereof.

(h) The report and order of the Commission assumes that the Commission has power to fix not only the form but also the facts to be set up in the accounts of the carriers under its jurisdiction.

(i) The order of the Commission is in disregard and is contrary to all of the evidence in this record bearing on the value of the properties so acquired by your complainant and is arbitrary and void.

(j) The Commission's Order undertaking to require your Orator to set up its property on its books at amounts which

greatly misrepresent and depreciate the actual investment of your Orator is an incorrect construction and interpretation of its reports and orders in Finance Docket 5454, ap- [fol. 27] proving the Plan under which your Orator acquired said property as has been herein set out.

(k) Your Orator avers that, because of each of the matters and things herein alleged, said Order of the Commission and its construction thereof deprives your Orator of its property without due process of law, contrary to the provisions of the Fifth Amendment of the Constitution of the United States, upon which your Orator relies.

(l) The requirements of the said order can be of no benefit to the public; but will be of great injury to your Orator and will require the unreal, incorrect and improper practices herein described.

Thirty-first

Your Orator avers that in the event your Orator should fail to keep its accounts, records and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, your Orator will forfeit to the United States the sum of Five Hundred ($500) Dollars for each such offense and for each and every day of the continuance of such offense.

Thirty-second

Your Orator further avers that in the event your Orator makes any false entry in the accounts or any book of accounts, or in any record or memoranda, kept by it, or if it should wilfully neglect to make full, true and correct entries in such accounts, records or memoranda of all facts applicable to its business, or shall keep any other accounts, records or memoranda than those prescribed and approved by the Commission, it shall be guilty of misdemeanor, and shall be subject in any court of the United States of competent jurisdiction to a fine of not less than One Thousand [fol. 28] ($1,000) Dollars or more than Five Thousand ($5,000) Dollars, or imprisonment of its officers or employees for not less than one year or more than three years, or both fine and imprisonment.

Thirty-third

If your Orator refuses to comply with the said order, it will be subjected to the terror of punishment under one or both of the above mentioned provisions of the Commerce Act.

Thirty-fourth

Your Orator cannot keep any other books than those which are lawfully prescribed by the Commission. Your Orator cannot intelligently or properly keep its books under the construction which the Commission has made of its order and without keeping other books it cannot show those investments and valuation which it must show in order to maintain for itself the rates for its freight and passenger service which the law and Constitution contemplate that it should have and which are necessary for it to have in order to maintain its proper and adequate existence and to carry on its affairs as a common carrier.

Thirty-fifth

Your Orator avers that it can have no relief against the matters and things herein set out, and especially against the said orders of said Commission, except through the protection of a court of equity.

If your Orator does not comply with the said order it will be subjected to suits, or other proceedings at law for penalties and fines under the terms of the Act of Congress known as the Interstate Commerce Act, and the amendments thereto, which would aggregate very great amounts of money.

So your Orator must either submit to the said Order of July 9, 1934, which it believes and alleges to be unjust, un-[fol. 29] reasonable, unlawful, and beyond the statutory and Constitutional jurisdiction of the Commission, for each and all of the reasons herein set out, or it must submit to suits and proceedings for the enforcement and exaction of fines and penalties in the circumstances mentioned. Thus your Orator must, unless the protection herein prayed is granted, act in circumstances which do not provide a safe and adequate judicial review of said order; and in so much as any other appeal to the Courts can be had only at the risk of paying penalties so great that it may be better to yield to orders of uncertain legality than to ask protection of the law, there will be a denial of that due process of law guar-

anteed to your Orator by the Fifth Amendment to the Constitution of the United States, upon which your Orator relies. Unless the said Orders of the Commission or its construction thereof are suspended and set aside your Orator will suffer irreparable damages for which there is no adequate remedy at law.

Your Orator can have judicial review of said orders guaranteed by the Constitution and contemplated by law, in only a Court of Equity, and under its protective process.

Thirty-sixth

Your Orator waives discovery under oath of the defendant. Forasmuch, therefore, as your Orator is without remedy in the premises, except in a Court of Equity, and to the end that it may obtain from this Honorable Court the relief to which it is by right and equity entitled, your Orator respectfully prays:

A. That it may please the Court to grant to your Orator a writ of subpoena, to be directed to the defendant, the United States of America, therein and thereby commanding it at a certain time and under a certain penalty to be named therein, to be and appear before this Honorable Court, then and there to answer all and singular the matters herein set out, but not under oath, answer under oath [fol. 30] being expressly waived, and to stand to, abide and perform such orders and decrees as this Court may deem meet:

B. And that, in view of the fact that irreparable damage will otherwise ensue to your Orator unless the said Orders of July 9, 1934, be temporarily stayed or suspended, an order be entered temporarily staying or suspending the operation of the said Order of the Interstate Commerce Commission for not more than sixty (60) days from the date of said order of suspension, pending the application for the order of injunction, and that an order be issued restraining the defendant, its officers, agents and employees from enforcing the aforementioned Orders of the Interstate Commerce Commission, or any part thereof, and that likewise all persons at interest in said orders be restrained from enforcing the same:

C. That an order issue in the terms of the statutes in such cases made and provided, requiring notice and service of

this bill and of all orders thereon, as is by such statutes prescribed:

D. That a day be fixed for a hearing of this cause upon application for temporary staying or suspending the said Orders of the Interstate Commerce Commission or its construction thereof, and as well a day be fixed for the hearing of this cause on interlocutory injunction; and that the said interlocutory injunction issue restraining and enjoining the defendant and all persons at interest, their officers, agents and employees from enforcing the said orders of the said Commission herein complained of; and upon final hearing of this cause said defendant and all persons at interest in said Orders of said Commission, their officers, agents and employees, be permanently enjoined from enforcing the same:

E. That the said Order of July 9, 1934, be held to be invalid and illegal upon each of the grounds herein set out:

[fol. 31] F. That your Orator have such other and further relief as may be meet and proper and that it have general relief.

Atlanta, Birmingham & Coast Railroad Co., B. L. Bugg, President. Carl H. Davis, Alston, Alston, Foster & Moise, Brandon, Hynds & Tindall, Solicitors for Complainants.

Duly sworn to by B. L. Bugg. Jurat omitted in printing.

[fol. 32] EXHIBIT "A" TO BILL OF COMPLAINT

Interstate Commerce Commission
Bureau of Accounts
Washington

434850

August 3, 1927.

Mr. E. L. Greene,
Auditor, Atlanta, Birmingham and Coast
Railroad Company,
Atlanta, Georgia.

DEAR SIR:

Receipt is acknowledged of your letter of June 20, 1927, file 56,000, submitting copies of opening entries recording the acquisition of the property of the Atlanta, Birmingham

and Atlantic Railroad Company, together with report prepared by Haskins & Sells, setting forth their reasons why the proposed entries should be approved.

The entries submitted are not acceptable in that the initial charge to account 701 "Investment in Road and Equipment," is based upon a valuation (reproduction cost new) instead of cost. This charge is excessive in the sum of the difference between $24,553,567.55 and $2,162,582.34, or $22,390,985.21, the former sum representing the alleged value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line Railroad in consideration of the payment by that company of current outstanding liabilities of the receiver, reorganization expenses, etc., amounting in the aggregate to $4,080,699.80. This sum less $1,918,117.46 representing depreciation charges set up in account 775, "Accrued Depreciation—Road," and 776, "Accrued Depreciation—Equipment," constitute the $2,162,582.34 referred to above.

The Commission's Order of October 26, 1926, under Finance Docket No. 5454 and your company's certificate of notification to the Commission dated January 10, 1927, ex- [fol. 33] plicitly sets forth that the no-par common stock shall be and was actually issued to the Atlantic Coast Line in consideration of that carrier assuming the obligations before mentioned.

While it is true, as stated by Haskins & Sells, that your company did not receive actual cash or property as a result of the action of the Atlantic Coast Line, your company, however, was directly benefited thereby to the extent of $4,080,699.80. Therefore, it will be necessary for you to consider the sum of $4,080,699.80 as the cash value of the 150,000 shares of no-par stock issued to the Coast Line Railway Company. Assuming, therefore, that the other assets and liabilities are correctly stated in the tentative balance sheet prepared by Haskins & Sells, in compliance with the Orders of the Commission you are directed to reduce the initial charges to account 701 by $22,390,985.21, the compilation of which is explained in the second paragraph hereof.

As the correction will place the initial charge to investment account on basis of money costs, it is of course proper that the depreciation reserves referred to in the second paragraph hereof should be canceled.

Please submit corrected copies of the opening entries to this bureau for completion of its files.

Yours very truly, (s) Alexander Wylie, Director.

[fol. 34] The foregoing bill has been presented to the Court. On motion of the complainant, it is ordered that the same be filed and subpœna issue, and that service be made thereon in accordance with the statutes in such cases made and provided. Complainant does not now move for a temporary restraining order, but reserves the right so to do during the progress of this cause, should occasion appear to require it, and this bill is filed without prejudice to its rights so to do.

This August 30, 1934.

Bascom S. Deaker, Judge United States District Court for the Northern District of Georgia.

[fol. 35] EXHIBIT "B" TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 25170

Accounting for Capital Items (in re Atlantic Coast Line Railroad Company & Atlanta, Birmingham & Coast Railroad Company)

Submitted April 14, 1934. Decided July 9, 1934

Upon inquiry and investigation initiated by the Commission, application of its accounting classification to the statement of the investment of the Atlantic Coast Line Railroad Company in the capital stock of the Atlanta, Birmingham and Coast Railroad Company, and application of said classifications and conditions in its order of December 21, 1926, authorizing issuance of capital stock, to the statement of the investment of the latter company in road and equipment and of its capital stock liability, considered, and accounting prescribed.

Robert C. Alston and Carl H. Davis for Atlantic Coast Line Railroad Company; and Carl H. Davis, John A. Hynds, and Robert C. Alston for Atlanta, Birmingham & Coast Railroad Company.

Report of the Commission

By the Commission:

Exceptions to the report proposed by the examiner were filed by the respondent Atlanta, Birmingham and Coast Railroad Company, herein called the Coast Company, and the case was argued orally.

This is an inquiry and investigation concerning the methods employed by the Atlantic Coast Line Railroad Company, herein called the Coast Line Company, in accounting for its investment in the capital stock of the Coast Company, and the methods employed by the latter in accounting for its liability for capital stock issued and for its investment in road and equipment.

The transactions involved are the acquisition by the Coast Company in January 1927 of the property and assets formerly owned by the Atlanta, Birmingham & Atlantic Railway Company, herein called the old company; the issuance and delivery by the former in the acquisition of said properties of $5,180,300 par value 5 per cent guaranteed preferred stock and 150,000 shares non-par common stock; and the assumption of guaranty of the preferred stock and the acquisition of the common stock by the Coast Line Company. These transactions were described and authorized by the report, supplementary report, certificate, and orders in Reorganization of Atlanta, B. & A. Ry. Co., 117 I. C. C. [fol. 36] 181; ibid., 439, and are hereinafter more fully detailed. The latter order, entered December 21, 1926, contained the following:

Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, "Cost of road purchased," the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.

By way of response to the foregoing requirement, the Coast Company proposed to include in its investment in road and equipment account, as of January 1, 1927, the

amount of $29,471,859, the derivation of which is hereinafter set forth. However, our Bureau of Accounts, contending that the amount received for the non-par stock was $4,080,699.80, insisted that the sum of that figure and the authorized par value of the preferred stock, or $9,261,043.87, was the maximum amount to be entered. The Coast Company thereupon filed, on December 29, 1927, a supplemental application for such a construction of the order of December 21, 1926, as would authorize its proposed accounting, for a hearing thereon, and for an opportunity to argue the matter orally before us or before division 4. It did not seek to present any new evidence. Division 4 conferred with the Coast Company's representatives and rendered an adverse ruling. The application was thereafter submitted to us on written argument and was denied by order of April 9, 1928. See Atlanta, B. & A. Ry. Co. Reorganization, 158 I. C. C. 6, 7.

The last-mentioned order was set aside by decree of the District Court for the Northern District of Georgia, of October 26, 1928, because entered without a hearing, with directions that the supplemental application of the Coast Company "stand for further hearing before said Commission." Atlanta, B. & C. R. Co. v. United States, 28 Fed. (2d) 885.

We thereupon reopened the proceeding for further hearing. The Coast Company introduced therein evidence purporting to show as of January 1, 1927, an investment in road and equipment of $24,481,893.86, consisting of our valuation of the properties as of 1914, as reported in Atlanta, B. & A. R. Co., 75 I. C. C. 645, plus additions and betterments to December 31, 1926, and a capital stock liability of $27,001,407.26. Although attention was directed thereto, the Coast Company offered no evidence showing its results of operation. Our report on further hearing, dated October 9, 1929, concluded with the following:

Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the [fol. 37] balance sheet statement of the new company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. The company will be expected to adjust its accounts in accordance with this finding within 60 days from service of this report. [Atlanta, B. & A. Ry. Co. Reorganization, supra, 14.]

No formal order was entered.

Treating the above language as constituting an order, the district court set it aside by decree of January 19, 1930. Atlanta, B. & C. R. Co. v. United States, 37 Fed. (2d) 401. The latter decree was reversed by the Supreme Court for lack of jurisdiction in the district court, because of the absence of a formal order subject to judicial review. United States v. Atlana, B. & C. R. Co., 282 U. S. 522.

Thereafter, and by order of March 26, 1932, upon our own motion and without formal pleadings, we entered upon the present inquiry and investigation and made the Coast Line Company and the Coast Company respondents thereto. A hearing has been held, in the course of which evidence was introduced by both respondents and by the Bureau of Accounts, including the incorporation by reference of certain matter from the proceedings above mentioned. Briefs were filed.

Facts

The old company was the result of a reorganization in 1915, through which it acquired the properties formerly owned by the Atlanta, Birmingham & Atlantic Railroad Company, and the latter's lessors, Georgia Terminal Company and Alabama Terminal Railroad Company. In financing the old company, 300,000 shares of capital stock of the par value of $100 were issued and sold at $12 per share, an issue of 5-percent first-mortgage bonds of a predecessor amounting to $4,090,000 was left undisturbed, and 5-percent income-mortgage bonds and script amounting to $4,543,906.78 were issued to holders of receivers' certificates. The cost of the properties in cash and assumption of liabilities thus aggregated little more than $12,000,000. While the foregoing securities were outstanding in the hands of the public and $825,000, principal amount, of first and refunding mortgage bonds and $400,000, principal amount, of said income-mortgage bonds were pledged as security for loans, a receiver was appointed in 1921 by said district court in a suit filed by a general creditor with which were consolidated foreclosure proceedings subsequently instituted by the trustees of the mortgages. No dividends have been paid on the stock since its issuance, nor has any interest been paid on the bonds since 1922. George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt were constituted a committee to represent the holders

of the income-mortgage bonds and Francis R. Hart, James [fol. 38] H. Perkins, Percy R. Pyne 2d, F. J. Lisman, and George Bramwell Baker, a committee to represent the holders of the first-mortgage bonds.

There followed numerous unsuccessful efforts to dispose of the properties or place them on a paying basis, involving negotiations with the State of Georgia, the Seaboard Air Line Railway Company, the St. Louis-San Francisco Railway Company, and other private interests. The inherent weakness of the road was lack of traffic. There was not much promise of future earnings and the committees at one time considered scrapping the properties. As an independent line its continued existence was doubtful. The committees finally received a proposal from the Coast Line Company which resulted in their entering into an agreement with that company under date of February 23, 1926, herein referred to as the agreement. Under the same date the committees adopted a plan of reorganization, herein referred to as the plan, which constituted said George E. Warren, George E. Roosevelt, Francis R. Hart, and James H. Perkins as a reorganization committee, and all of the committees proposed an agreement of reorganization with such bondholders as should assent and become parties thereto. The plan and agreement of reorganization were approved by the court May 15, 1926, as the only practical means of early termination of the receivership, and were ultimately assented to by the holders of all but $64,300, principal amount, of the bonds.

The agreement contained, as exhibit A thereto, a schedule of estimated cash requirements for discharging prior claims, expenses of administration, etc., approximating $3,677,500, herein designated priorities. The agreement recited the pendency of the foreclosure proceedings, the general creditor's bill and the receivership, the expectation of settlement with the holders of the pledged bonds, the proposal to form a new company to acquire, through foreclosure sale and sale under the general creditor's bill, the assets of the old company and/or its receiver, and provided among other things in substance as follows:

That the New Company should be authorized to issue $5,200,000 par value, 5 percent cumulative, redeemable stock, preferred both as to distribution of assets and dividends, the latter to accrue from one year following its pos-

session of the properties, and to be guaranteed by the Coast Line Company in both respects, also 150,000 shares of non-par common stock with sole voting power, except that during the continuance of default in payment of two semi-annual dividends on the preferred stock the latter should have exclusive voting power.

That upon the promulgation of the plan, the committees would endeavor to cause the assets to be acquired by the New Company by bidding therefor up to $4,500,000 in addition to the priorities above mentioned, and that the Coast Line Company would furnish upon request funds necessary to qualify the bidders and "upon the acquisition of said [fol. 39] properties by the New Company, subject only to such of the items included in Exhibit A * * * as may not have been already discharged", would reimburse the committees for such payments on account of purchase price as may have been required to be paid in cash.

That in case of acquisition of the assets by the New Company, the Coast Line Company would provide cash for the requirements specified in Exhibit A as well as to meet the distributive shares of non-assenting bondholders in the proceeds of sale; and that "the Railroad Company [Coast Line Company] shall be entitled to receive the entire issue of 150,000 shares of common stock of the New Company in exchange for the cash which the Railroad Company shall provide hereunder."

That bondholders assenting to the plan should receive $60 par value of preferred stock of the New Company for each $100 principal amount of bonds of the Old Company; that non-assenting bondholders should receive in cash their distributive shares as fixed by the court and the preferred stock thereby released should be issued to the Coast Line Company; and that claims having priority over the bondholders, loans of the Old Company secured by pledge of its bonds, equipment obligations held by the United States, and obligations of the receiver (the foregoing and the items in the following paragraph constituting the priorities above mentioned) should be paid in cash by the Coast Line Company upon acquisition of the properties by the New Company except that certain unmatured priorities might be assumed by the New Company without, however, releasing the Coast Line Company from responsibility for payment thereof at maturity.

That compensation and expenses of the committees, the mortgage trustees, the reorganization committee, their respective and other counsel involved in the receivership, allowances to the receiver and special masters, reorganization expenses, and expenses connected with organization of the New Company and its acquisition of the property, not exceeding in the aggregate $600,000 would be paid in cash by the Coast Line Company upon acquisition of the properties by the New Company.

That the committees should join in promulgating a reorganization plan.

That the committees might appoint a joint reorganization committee with power of substitution for the committees.

The plan recited that it was based upon and promulgated pursuant to the agreement. It further recited, among other things, that by reason of insufficient earnings of the properties it had not been feasible to work out a plan for independent reorganization that could be financed; and that no proposition had been received that seemed as satisfactory as that contained in the agreement. It stated that no provision was made for the stock of the old company. It set forth the important provisions of the agreement and provided, among other things, that bondholders desirous of participating should comply with certain requirements, that with respect to the agreement, the reorganiaztion committee was substituted for the committees, and that the plan and agreement of reorganization were expressly made subject to the agreement.

The agreement of reorganization incorporated the plan to which it was annexed, prescribed the rights of assenting [fol. 40] bondholders and the powers of the reorganization committee, and provided the machinery whereunder such bondholders should, through the committee, undertake to consummate the plan.

The decree of foreclosure and sale, dated April 30, 1926, provided that the properties should be sold subject to the priorities in default of payment of which the properties were subject to be retaken and sold. It also fixed an upset price of $2,500,000.

Upon objections of certain stockholders looking to a postponement of any sale and further consideration of the

amount of upset price, the court, under date of May 11, 1926, rendered an adverse opinion, in the course of which the history of the receivership was briefly summarized and the following statements appear:

> The stockholders were not regarded as having any possible interest or equity. No one was in prospect who, at any price, would consider buying the property to run it. * * * I am satisfied that this road, however skillfully managed, can hardly sustain itself by its local traffic and cannot secure enough through traffic to make it permanently profitable, surrounded as it is by strong systems controlling their own business. This has been shown by the entire history of the railroad, as well as by the experience of this last receivership. Nevertheless, in the hands of a strong system, furnishing its traffic to it, its profitableness could be greatly enhanced. The great activity of Florida and prosperity in south Georgia have been reflected in better earnings on this railroad during the past year, and these have brought forward a prospective purchaser.

The activity mentioned by the court had largely subsided by the middle of 1926 and was clearly in process of decline before the close of that year.

At the foreclosure sale which was conducted on June 22, 1926, the only bid was $4,500,000. This was tendered by George E. Roosevelt and J. A. Fowler, Jr., on behalf of the reorganization committee, and upon condition that we should, within a time which in the opinion of the court should be reasonable, grant authority enabling the execution of the plan and agreement of reorganization pursuant to the pending applications on behalf of the (proposed) Coast Company and of the Coast Line Company. That bid was accepted by the court on June 23, 1926, subject to the condition stated, and conveyance of the properties to the purchasers ordered in accordance with the decree of foreclosure.

A copy of our report, certificate and order of October 26, 1926, Reorganization of Atlanta, B. & A. Ry. Co., supra, was subsequently filed with the court and the condition previously attached to the bid was withdrawn, whereupon the court, on November 16, 1926, confirmed the sale unconditionally.

The properties were thereupon conveyed to the purchasers, subject to the priorities, by deed of the special [fol. 41] master of November 16, 1926, in which the old company, the receiver, and the trustees of the first mortgage and the income mortgage joined. Thereafter the properties were conveyed to the Coast Company by deed of George E. Roosevelt and J. A. Fowler, Jr., dated January 1, 1927, subject, however,

to such of the encumbrances, liens, conditions, terms and provisions subject to which the said property and assets were conveyed to the Purchasers, as have not heretofore been discharged, satisfied, performed, released or otherwise complied with and/or removed.

In the meantime and in partial performance of the agreement the Coast Line Company had purchased the following priorities amounting with accrued interest as stated: Note of the old company held by Birmingham Trust & Savings Company, secured by $125,000, principal amount, of first and refunding mortgage bonds, $121,395; note of the old company held by National Bank of Commerce secured by $405,000, principal amount, of first and refunding bonds, $383,210.15; equipment-trust and other notes of the old company held by the United States, $816,982.65; which with note of B. L. Bugg, receiver, held by the Coast Line Company, $244,154.65, secured by $295,000, principal amount, of first and refunding bonds and $400,000, principal amount, of income bonds, make a total of $1,565,742.45.

On January 4, 1927, the Coast Line Company, in extinction of the priorities it had purchased and held, delivered to the receiver the evidences of the indebtedness and the collateral securing the bank loans, together with a check for $1,323,410.88 payable to his order to cover back taxes and interest amounting to $488,929.57 and obligations of the old company and of the receiver for material and supplies amounting to $834,481.31, also a letter containing an assumption of liability for any additional obligations of the receiver which might arise. Payments by the Coast Line Company and the Coast Company on account of the latter have been recorded at $1,325,621.09, which would make a total outlay of $4,214,774.42. This exceeds the amount of $4,080,699.80, stated in the certificate of notifi-

cation hereinafter mentioned, by $134,074.62, which represents the difference between items included in the former only, amounting to $391,294.56, and reduction of items included in the latter, amounting to $257,219.94.

On January 4, 1927, the Coast Company issued to American Exchange Irving Trust Company a certificate for 51,803 shares guaranteed preferred stock for account of the reorganization committee and delivered the same to the committee. On the same day the Coast Company issued and delivered to the Coast Line Company a certificate for 150,000 shares non-par common stock. This was subse- [fol. 42] quently surrendered for the issuance of qualifying shares to the five directors and the remainder to the Coast Line Company.

The reorganization committee subsequently distributed the preferred stock in accordance with the plan and agreement of reorganization and in June 1928, after ascertainment of the amount of non-assenting bonds, 384 shares of the stock were issued to the Coast Line Company. As it would have required the total authorized issue of $5,180,344.07, par value, preferred stock to retire the bonds at the agreed ratio, the Coast Line Company appears to have borne the difference of $44.07, par value, as well as fractional excesses distributed to the bondholders.

During oral argument upon the applications disposed of in Reorganization of Atlanta, B. & A. Ry. Co., supra, counsel for the Coast Line Company was asked how the number of shares of non-par stock was determined. He answered in part as follows:

> In a sense it was expediency. I do not know that any definite or specific calculation has been made. It seems to us relatively a fair proportion. In a sense it was just the proportions between the non-par stock, whatever that stock is, and then the number of shares represent the equity in the property after the $5,200,000 preferred is protected; *and if it is only $3,670,000 that is to be paid in cash, it would have a value of about $24 a share.* • • • [Italics supplied.]

Pursuant to section 20a (5) of the Interstate Commerce Act, the Coast Company filed on January 17, 1927, its verified certificate of notification stating that it had disposed of $5,180,300, par value preferred stock for account of the

reorganization committee for the retirement of first-mortgage bonds of the par value of $4,090,000 and income-mortgage bonds of the par value of $4,543,906.78 in accordance with the plan and agreement of reorganization. This certificate of notification further states that the Coast Company had sold to the Coast Line Company, in accordance with the plan and agreement of reorganization, 150,000 shares non-par common stock tentatively valued at $4,080,699.80 for the payment by the Coast Line Company of obligations listed in that amount, constituting the priorities herein referred to.

As a result of the payment and assumption of the priorities, the receiver surrendered possession of the properties to the Coast Company on January 4, 1927. Thereafter the Coast Line Company paid receivership expenses in the net amount of $595,036.37, miscellaneous expenses $16,379.82, additional back taxes and interest $65,410.84, additional obligations for material and supplies $175,495.45, equipment obligations and interest $85,349.80, and reimbursed the receiver on account of claims paid by the latter in the amount of $120,651.80, total $1,058,324.08.

[fol. 43] The grand total paid by the Coast Line Company in extinction of priorities was thereby increased to $3,947,477.41, and including $50,000 advanced for deposit with the special master pursuant to the agreement, in order to qualify the reorganization committee's bidders, the total thus paid and advanced to June 7, 1932, aggregated $3,997,477.41. The latter amount was carried in balance sheet account 727, "Other unadjusted debits." A vice president of the Coast Line Company, in charge of accounts, testified that this disposition was adopted because the total to be paid had not been fully determined, it being anticipated that some minor items, lap-overs, etc., would develop and that these would be set up when paid. He further stated that it was the intention to transfer the amount to account 706, "Investments in affiliated companies", when the total was finally determined and that the Bureau of Accounts had been so informed.

Of the $50,000 deposit advance, $33,513.16 was ultimately paid to nonassenting holders of $64,300 principal amount of bonds at the rate of $521.20 per $1,000 bond which had been fixed by the court. As the preferred stock was to have been

exchanged at the rate of 6 shares per $1,000 bond, the Coast Line Company would thereby have been entitled to 385.8 shares. It received instead 384 shares, leaving 1.8 shares (or $156.36 at the above ratios) due the Coast Line Company. If the latter was accounted for it has not been identified in the record. On the assumption that the Coast Line Company did not receive this $156.36 the cost of acquisition of the 384 shares of preferred stock represents about $87.27 per share. The balance of the amount deposited, or $16,486.84, was turned over to the receiver for account of the Coast Line Company and is lodged by the Coast Company in account 778, "Other unadjusted credits", to the credit of the Coast Line Company.

With respect to certain priorities consisting of unmatured equipment-trust obligations of the receiver outstanding as of January 1, 1927, the Coast Company made payments aggregating $267,297.01, which is carried in account 727, "Other unadjusted debits", against the Coast Line Company. Including this item the total payments by, and determined liability of, the Coast Line Company on account of the extinction of obligations prior to the interest of the bondholders of the old company, and subject to which the Coast Company took its deed to the properties, aggregate $4,214,774.42. This includes interest on receiver's equipment-trust notes accrued subsequent to January 1, 1927, in the amount of $13,337.15. On the other hand, it does not include $46,976.49 shown in the certificate of notification as part consideration for the non-par stock, being interest at 6 percent on $816,982.65 of equipment-trust and other notes [fol. 44] of the old company from January 15 to December 31, 1926. The Coast Line Company did not actually pay this interest as it had taken up the item long prior to January 1, 1927. Neither did it record the cost of carrying the item or introduce any evidence thereof. Including it at the above figure and excluding the subsequent accrual, the cost to the Coast Line Company of the non-par stock would be $4,248,413.76, or about $28.32 per share.

Under date of January 27, 1927, the auditor of the Coast Company directed a letter to the Bureau of Accounts in which he stated that as indicated in his previous letter of October 9, 1926, that company desired to set up its investment on the basis of cost of reproduction at June 30, 1914, as determined by our Bureau of Valuation, adjusted for

additions and betterments to December 31, 1926. He then quoted the condition embodied in our order of December 21, 1926, and stated as his understanding therefrom that the value of the stock issued could not be included in the investment account in excess of some $9,000,000 or $10,000,000. He concluded by requesting permission to carry the difference to profit and loss or to a suspense account and suggested a conference on the matter. The writer of this letter was formerly employed both by the receiver and by the old company and had deceased prior to the hearing herein.

The Bureau of Accounts replied by letter of February 15, 1927, stating that our effective classifications required the statement of property investment on the basis of cost as distinguished from value, and that the condition above mentioned must be adhered to. A copy of the tentative revised text of account "Railroad purchased" was enclosed with the request that, unless some obstacle thereto were discovered, proposed entries be submitted in compliance therewith.

On June 20, 1927, the Coast Company transmitted to the Bureau of Accounts a proposed balance sheet as of January 1, 1927, prepared by Haskins & Sells, a firm of certified public accountants periodically employed by the Coast Line Company, together with a report by that firm setting forth its reasons in support of the proposed entries. The Coast Line Company paid for this service. The theory that in acquiring its properties the Coast Company received nothing from the Coast Line Company is first mentioned in said report.

The proposed balance sheet includes account 701, "Investment in road and equipment", at $29,471,859, representing our estimates of cost of reproduction and value of lands as of June 30, 1914, adjusted for additions and retirements to December 31, 1926. It also sets up the liability on account of preferred stock at $5,180,300, and for nonpar common stock at $24,553,567.55, the latter constituting a [fol. 45] balancing entry. All other assets, including miscellaneous physical property at $1,262,970 and investments in affiliated and other companies at $198,280; and liabilities, including receiver's equipment-trust notes and interest thereon at $322,500 and $16,809.66, respectively, audited accounts and wages payable at $444,405,73, and accrued de-

preciation, road and equipment, at $1,918,117.46, were brought over from the books of the old company and its receiver, the net debit balance amounting to $262,008.55.

The foregoing proposal was rejected by the Bureau of Accounts by letter of August 3, 1927, which pointed out that the entry in account 701 was not based upon cost and that since the non-par common stock was issued to the Coast Line Company in consideration of its assumption and payment of $4,080,699.80, receiver's liabilities, reorganization expenses, etc., for the direct benefit of the Coast Company, as contemplated by our order of October 26, 1926, and as stated in the certificate of notification above mentioned, that amount should be considered to be the cash value of the non-par stock. The letter further stated that in reducing the initial charge to investment in road and equipment to a cost basis, it would be proper to cancel the depreciation reserves and that upon the assumption that the other assets and liabilities were correctly stated such charge should be reduced by $22,390,985.21. The latter amount represents the difference between the respective valuations of non-par stock plus the depreciation reserves.

On this basis the investment in road and equipment would be included at $7,080,873.79, the liability on account of preferred stock at $5,180,300, and for non-par common stock at $4,080,699.80, the net debit balance of all other assets and liabilities being $2,180,126.01.

About 1929 the Coast Company modified its contention with respect to capital assets and liabilities so that, according to its present position, the balance sheet as of January 1, 1927, should include investment in road and equipment at $24,010,135.47, representing our single-sum values for the component properties after eliminating working capital and adjusting for intervening additions and retirements. The difference between this figure and the amount of $24,481,893.86 advocated at the further hearing reported in Atlanta, B. & A. Ry. Co. Reorganization, supra, is attributed to net retirements and additions made prior to January 1, 1927, but not recorded in the accounts at December 31, 1926. The liability on account of preferred stock would be stated at $5,180,300 and that for non-par common stock at $21,528,653.20, which is a balancing entry. As a result of its elimination of depreciation reserves and cer-

tain current assets and current liabilities exhibiting a net credit balance of $77.75, the assumption by the Coast Line [fol. 46] Company of receiver's equipment-trust notes and interest amounting to $339,309.66 and accounts and wages payable audited prior to January 1, 1927, in the sum of $179,304.33, and a correction reducing the statement of unadjusted debits by the amount of $0.02, the Coast Company would now set up all other assets and liabilities at a net debit balance of $2,698,817.73.

As applied to these figures, the theory and requirements of the letter of the Bureau of Accounts of August 3, 1927, would result in the statement of investment in road and equipment at $6,562,182.07, the liability on account of preferred stock at $5,180,300, and that for non-par common stock at $4,080,699.80. Substituting for the figure $4,080,699.80 used by the Bureau of Accounts, the amount developed by the present record, the investment in road and equipment would be stated at $6,729,896.03, the liability on account of preferred stock at $5,180,300, and that for non-par common stock at $4,248,413.76.

No opening entries for capital assets or liabilities had been made in the Coast Company's books prior to the conclusion of the hearing herein.

The aggregate railway operating expenses of the old company and the receiver for the period 1916 to 1926, inclusive, exceeded the aggregate railway operating revenues by $1,051,591.07. Including railway tax accruals and uncollectible railway revenues, there was an aggregate deficit in railway operating income of $3,081,373.03. Taking into account the debits and credits arising from equipment and joint-facility rents, the deficit in net railway operating income aggregated $4,055,883.48.

The aggregate railway operating expenses of the Coast Company for the period 1927 to 1931, inclusive, exceeded the aggregate railway operating revenues by $248,969.52. There was an aggregate deficit in railway operating income of $1,190,401.36. The deficit in net railway operating income aggregated $2,124,893.29. The operating results became less favorable each succeeding year. It appears, however, that there was a steady decline in traffic of practically all railroads in the Southeast since 1927, due to the collapse of the Florida boom in 1926, and that there was a decline in traffic of the railroads generally since about 1928.

As a result there has been a great depreciation in the market values of the securities of all the roads.

The Coast Company has paid no dividends on either of its issues of stock. In accordance with its guaranty, the Coast Line Company has paid dividends on the preferred stock.

The chief engineer of the Coast Line Company, who had casually examined a minor portion of the properties in 1926 and inspected them in 1927 from an observation car in order [fol. 47] to determine their condition, testified that the cost of reproduction as of January 1, 1927, was $47,307,867 for the transportation property inventoried by us as of June 30, 1914, to the Atlanta, Birmingham & Atlantic Railroad Company, a predecessor of the old company. The witness arrived at this figure by applying factors to our estimates of the value of land and cost of reproduction of other property. These factors, said to represent the ratio between the 1925 and 1914 price levels, were derived from investigation and experience of the Coast Line Company with respect to land values in Georgia, prices for road items in that State and Alabama, and evidence with respect to equipment and telegraph property introduced by the Bureau of Valuation in Excess Income of Richmond, F. & P. R. Co., 170 I. C. C. 451. It was his opinion that the Coast Company's territory is either similar to, or more severe than, that of the Coast Line Company in Georgia and Alabama. No adjustments were made for additions or retirements subsequent to valuation date, nor was any effort made to identify the equipment as of January 1, 1927, with that in existence on the former date. He also stated that the roadway was in normal condition in 1927, barring the necessity of expending approximately $936,000 over a period of nine years for replacement of rail and other track material, but that the buildings, etc., were not in good condition and required the expenditure of approximately $144,000 on account of deferred maintenance. The witness also testified that the property was of greater value when considered in the light of its relation to the system of the Coast Line Company than as independently operated and likewise worth more on January 1, 1927, than on June 30, 1914, although he had no opinion as to the value thereof as of either date. He further testified that if the property had

not been in existence on January 1, 1927, it should have been constructed substantially as it is, but that he would have to make a careful reexamination in the light of specifically applicable data before stating whether he would have recommended the expenditure of $47,000,000 for that purpose.

The assistant auditor of the Coast Company, who had been connected with the properties since 1919, explained the use of our valuation thereof, as of 1914, in developing the present contention for the amount of investment in road and equipment and submitted a proposed balance sheet as of January 1, 1927, revised in accordance therewith. He described the properties as consisting of about 640 miles of main line extending from Brunswick, Waycross, and Thomasville, Ga., joining at Sessoms and Fitzgerald and diverging at Manchester, thence to Atlanta, Ga., and Birmingham, Ala., with various terminals, and introduced copies of balance sheets heretofore filed with us showing that the combined investment in road and equipment of the [fol. 48] predecessors of the old company as of December 31, 1915, was recorded at $62,819,400.01. The old company recorded its investment in road and equipment as of January 1, 1916, at $38,760,149.87. The witness did not know the nature of these purported costs, but stated that we had not, to his knowledge, criticized any of them.

This witness also testified that as applied to the proposed balance sheet of June 20, 1927, the letter of the Bureau of Accounts of August 3, 1927, would require the statement of $6,741,486.40 for investment in road and equipment, but subsequently submitted adjustments which would lead to the amount of $7,080,873.79, hereinabove set forth. Quoting and applying the text of road account 41, "Cost of road purchased", he deducted from the foregoing $2,999,776.05 as representing the recorded investment of the old company in equipment, less depreciation as of December 31, 1926, and also the minimum appraisal thereof by the superintendent of motive power. This would leave for investment in road $3,741,710.35 or, when correspondingly corrected, $4,081,097.74, which in his opinion does not even approximately represent the value thereof. He then testified that if the books were opened on such a basis they would be useless for depreciation accounting, the ascertainment of fair value, or for the purpose of negotiating mortgage loans or selling stock.

It was his further statement, or conclusion rather, that for its issue of non-par common stock the Coast Company received only the deed to the properties.

The witness had no opinion as to whether the properties were worth the recorded investment in road and equipment as of December 31, 1915, but he thought as of January 1, 1927, they were worth the $24,000,000 figure sought. It was also his opinion that the road items were reasonably worth and could have been sold as of the latter date for approximately $21,000,000, although he had no opinion as to what could have been obtained for the equipment. The basis of this opinion was the location and magniture of the property and the fact that it was a going concern, but he conceded that the location was valuable for the traffic involved and that the latter as well as the element of going concern was reflected in earnings. He assumed that as a result of the maintenance required in order to continue operation the property valued by us as of 1914 would not have depreciated in value by January 1, 1927.

The witness further testified that in addition to the physical properties, the Coast Company took over and assumed the current assets and liabilities of the old company and its receiver. The amount carried over to the revised proposed balance sheet for investment in affiliated companies represents notes amounting to $74,680 which were not paying interest, and stocks amounting to $123,600. [fol. 49] While he stated the latter had been on a dividend basis, he could not recall that any dividends had been received thereon after January 1, 1927.

A vice president of the Coast Company whose connection with the properties dated from 1912, except for a portion of the period of Federal control, testified that there had been a gradual and substantial increase between June 30, 1914, and January 1, 1927, in the number of industries in that company's territory and the revenue of its predecessors therefrom. It was also his testimony that similar increases occurred in the population of Florida, the value of manufactured products and number of rail carloads of fruits and vegetables originating therein, and the freight revenue of the Coast Company's predecessors from Florida traffic, their lines constituting portions of through routes in that respect. He had no figures for the portion of the fruit and vegetable traffic moving over the line now owned

by the Coast Company. The principal industrial sections are at Atlanta and Birmingham, which are competitive points.

This witness also stated that most of the Florida traffic from the lines of the Coast Line Company and the Florida East Coast Railway Company moves through Jacksonville and Waycross, and that from the latter point the Coast Company's lines form a bridge between those of the Coast Line Company and its affiliates at Atlanta and Birmingham, being shorter than either the Augusta or Montgomery routes. The Coast Line Company has another route to the North and West via the Clinchfield.

Based on the foregoing, as well as the physical condition of the properties, and the fact that no new line had been built in the territory, it was his opinion that the properties were not only of greater value on January 1, 1927, than the amount sought to be entered as investment in road and equipment, but worth more then than on June 30, 1914. However, he had not considered what they were worth on the latter date. The witness also testified that in his opinion the Coast Line Company would have been justified in spending $40,000,000 to build a line substantially in the location of the Coast Company's properties if the latter had not been in existence, but he was unable to point to any traffic which would pay a return thereon. He further stated that the Coast Line Company had not changed the routing of its Florida traffic since January 1, 1927, and the Coast Company's proportion thereof had continued substantially unchanged. The peak of the latter's earnings occurred in 1926.

The president of the Coast Company, who was the receiver of the old company, testified that the cost of reproducing the properties would have been greater in 1927 than in 1914, and basing his opinion thereon, as well as on in-
[fol. 50] creases in gross revenue and net railway operating income, population of counties served, and assessed value of real estate in Georgia and Alabama, stated that the properties were more valuable on January 1, 1927, than on January [June] 30, 1914. Considering the location, magnitude, physical condition, and terminal facilities, of the properties, their relation to those of the Coast Line Company, general traffic conditions, development of the territory served, and connections with other carriers, he was

of opinion that on January 1, 1927, the properties were worth, for sale or exchange, $24,010,135.47, and that such was the proper amount to be entered as investment in road and equipment. He did not mean that anyone would have paid that price. It was also his opinion that the terminals only, at Atlanta and Birmingham, were worth $6,000,000 or $8,000,000, although he did not know whether they could have been sold separately. Referring to the fact that the Coast Company's lines form part of a through route for traffic to and from the Coast Line Company's Florida points, he stated that it was in the power of the latter to give the former a great deal of unrouted westbound traffic and to influence the routing of even more. He conceded, however, that the Coast Line Company had not increased the proportion of interchange with the Coast Company, because of the former's desire to preserve traffic relations of greater value.

The witness also said that if the Coast Company's properties were not in existence they should be reproduced, except that some parts of it might have been laid out differently. He thought that such a road should belong to the system of the Coast Line Company, so that the latter would not be unprotected and exposed to its competitors. He stated that a group of short-line lumber roads in southern Georgia, dating from about the nineties, constituted the nucleus from which the properties were developed by successive westward extensions.

It was the witness' opinion that the last receivership was precipated by conditions accompanying Federal control. The old company had accepted the guaranty provided by the Transportation Act, 1920.

The witness further stated that there was no evidence that the stockholders of the old company could realize anything for their equity, and they made no effort to lift the receivership, while on the other hand the bondholders by paying off some $4,000,000, could have taken over the properties under foreclosure. About the time of negotiations with the Coast Line Company he made a memorandum of the results of operation for the period November 1, 1924, to October 31, 1925, showing net earnings of approximately $400,000 after taxes. Payment of taxes was considerably deferred, beginning 1921. He doubted that the properties ever had enough local traffic to support them and did not [fol. 51] believe that they could be permanently operated

successfully as an independent railroad. As receiver he was interested in obtaining the maximum amount for the properties and considered that the reorganization committee used every reasonable effort to dispose of them and obtained all that could have been realized.

This witness purchased 200 shares of the preferred stock on the market at 93¼ in 1927 and sold it about 1928 at 103.

The Bureau of Accounts produced the examiner in charge of the securities section of our Bureau of Finance, an accountant experienced in appraising securities and in determining the adequacy of the consideration therefor. With respect to the latter he regarded the ability to produce income as the most important factor. It was his opinion that the cash value of the consideration given by the Coast Company in the acquisition of its properties did not exceed $9,395,075, as of January 1, 1927. That amount is represented by the par value of the preferred stock and the amount paid and to be paid by the Coast Line Company for the non-par stock, and resulted from the witness' consideration of the history of the properties, the efforts to dispose of them, their past and prospective earnings, the investment of the old company therein following the first receivership, our valuation thereof for rate-making purposes, the particular value thereof to the Coast Line Company, and the consideration paid for the securities under the agreement of February 23, 1926.

In the opinion of the witness, the best measure of value of the non-par stock, and the actual consideration therefor, is the amount paid and assumed by the Coast Line Company in discharging the claims against the properties which were prior and superior to the mortgages securing the bonds. He also referred to the market value of the preferred stock, as indicated by the $87.27 per share paid by the Coast Line Company in the acquisition of 384 shares, and considered that the guaranty of that company was the only thing that made the stock worth that figure. It was his opinion that the preferred stock with the guaranty was in the same class with a debenture of the Coast Line Company which, at 5 percent, would have been worth about par as of January 1, 1927, as indicated by the market for its secured obligations. Accordingly, he considered that the Coast Line Company could have purchased the properties free from liens for $9,395,075 in cash.

The witness further stated that in his judgment the payments and obligations made and incurred by the Coast Line Company in acquiring control of the properties were just about all the latter were worth and more than the Coast Company, as an independent company, could have afforded to pay. The net railway operating income for 1926 was [fol. 52] the highest since 1917 and capitalized at 5 percent, amounts to $2,908,300. On the record of earnings he thought it would have been very poor business for anyone to have paid more than $3,000,000 for the properties unless they had a particular value to the purchaser not involving profitable operation when considered alone or unless there were reasonable prospects of increased earnings. He could find no indications of the latter. As a result of the competitive conditions with respect to Florida traffic that had developed by 1926, this witness stated that the prospects were that under independent operation the properties would constitute a liability and would be worth little more than their value as scrap. He further stated that is was the prospect of saving the existing traffic and rounding out its system that constituted the principal justification for the consideration given by the Coast Line Company for control of the properties.

The witness accorded little weight to the investment account of the old company, considering not only that it was largely inflated, but further that the actual investment was not justified by subsequent events. Under the circumstances of acquisition, and regarding it the only proper basis for the issuance of securities, he arrived at a valuation of the properties as a whole for exchange purpose. The witness did not think there was any difference between the exchange value of the properties and the exchange value of all the securities. He did not reach any conclusion with respect to the value of specific pieces of property for ratemaking purposes nor did he consider the cost of reproducing the several elements of the property except as reflected in our valuation under section 19a.

Comment

The following excerpts embrace pertinent provisions appearing in the indicated portions of our accounting classifications applicable to steam roads.

In the Classification of Income, Profit and Loss, and General Balance Sheet Accounts, special instructions pertaining to general balance sheet accounts:

1. Balance-sheet accounts.

Balance-sheet accounts are those showing the assets, liabilities, and corporate surplus or deficit of the business.

And in text pertaining to general balance sheet accounts, debits:

701. Investment in road and equipment

This account shall include the accounting company's investment in road and equipment (including that held under contract for purchase) in existence at the date of the balance sheet. • • •

[fol. 53] 705. Miscellaneous Physical Property

This account shall include the accounting company's investments in physical property other than transportation property assignable to accounts Nos. 701 and 702, including hotels, restaurants, commercial power plants, etc., which are entirely distinct from transportation property and are not operated in connection with the transportation service of the accounting company. • • •

706. Investments in Affiliated Companies

This account shall include the ledger value of the accounting company's investment advances to affiliated companies, also of its investment in securities issued or assumed by such companies, such securities not being held in special deposits or in special funds.

This account shall be subdivided:

(a) Stocks.

(b) Bonds.

(c) Notes, including herein not only notes that run longer than two years and all notes of affiliated companies held as investments, but also notes payable on demand or within two years from the date of issue when it is mutually under-

stood and intended that the notes shall not be enforced as current assets. (As amended effective January 1, 1921.)

(d) Advances. * * *

Note B.—The term affiliated companies includes:

1. Controlled companies, including companies solely controlled by the accounting company, and also companies jointly controlled by the accounting company and others under a joint arrangement. * * * By control is meant the ability to determine the action of a corporation. * * *.

Credits:

751. Capital Stock. (As modified effective October 1, 1921.)

This account shall include the total value as herein provided of certificates or receipts issued to represent permanent interests in the accounting company, or interests which, if terminable, are so only at the option of the company.

When such certificates or receipts have a par value they shall be included in this account at par value.

When such certificates or receipts have no par value they shall be included in this account at the amount corresponding to the cash received, or the cash equivalent if the consideration is other than cash. This account shall also include amounts collected when a general levy or assessment is made against the holders of capital stock having no par value. * * *

The amounts included herein shall be further divided so as to show the amount of each class of stock issued, separated as between par value and non-par value stock, as follows:

(a) Common stock.—Stocks which have no preference over other issues of stock in distribution of dividends or of assets.

(b) Preferred stock.—Stocks having preference over other issues of stock in distribution of dividends or of assets. * * *

Note D.—For the purpose of the balance-sheet statement capital stock is considered to be nominally issued when certificates are signed and sealed and placed with the proper officer for sale and delivery, or pledged, or other-

wise placed in some special fund of the accounting company. It is considered to be actually issued when it has been sold to a bona fide purchaser for a valuable consideration, and such purchaser holds it free from all control by the accounting company. All capital stock actually issued [fol. 54] and not reacquired and held by or for the accounting company is considered to be actually outstanding. If reacquired by or for the accounting company under such circumstances as required it to be considered as held alive and not cancelled or retired, it is considered to be nominally outstanding.

Note E.—With respect to capital stock issued with par value: In the general balance-sheet statement the total capital stock included in the account shall be shown in the first short column. The amount nominally but not actually issued and the amount nominally outstanding shall be shown in the second short column, and in the long column shall be shown the amount actually outstanding.

Note F.—With respect to capital stock issued without par value: An appropriate record shall be maintained of the number of shares nominally issued, actually issued, actually outstanding, and nominally outstanding. The number of shares in each class shall be duly reported by the accounting company under appropriate schedules in its annual report. • • •

In the Classification of Investment in Road and Equipment, general instructions:

1. Accounts for Investment in Road and Equipment.

The accounts prescribed in this classification are designed to show the investment of the carrier in property devoted to transportation service. The carrier's investment in physical property other than transportation property is provided for in balance-sheet account No. 705, "Miscellaneous physical property." The carrier means the accounting carrier, except when otherwise specifically indicated. • • •

2. Items to Be Charged.

To these accounts shall be charged the cost of original road, original equipment, road extensions, additions, and betterments; • • •.

[2. 11th paragraph]. Costs shall be actual money costs to the carrier. * * *

3. Basis of Charges.

The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it. The carrier shall be prepared to furnish the Commission, upon demand, the particulars of its determination of the actual cash value of the consideration, if other than money. * * *

And in text pertaining to road:

41. Cost of Road Purchased.

This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made.

[fol. 55] This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the Commission.

Note A.—The appraised value of any equipment thus acquired shall be charged to the appropriate equipment accounts. The value, at time of purchase, of any securities, or other assets acquired, shall be included in the accounts appropriate for such assets. The par value of any liabilities assumed shall be included in the appropriate liability

accounts, and the necessary adjustments between the cash value charged to the property accounts and the par value shall be made in the appropriate premium or discount account.

Note B.—The carrier shall be prepared to furnish the Commission, upon demand, a full report of the contract of acquisition of each road, or portion thereof, purchased, and a statement showing in detail the consideration given therefor. • • •

In its brief the Coast Line Company states that subsequent to the conclusion of the hearing it transferred the items in question from account 727 to account 706, "Investments in affiliated companies." To the extent that the cost of acquiring the stock in question is thus recorded, the controversy with the Coast Line Company is determined. However, the cost to that company of carrying to January 1, 1927, the item of $816,982.65 expended in taking up equipment trust and other notes of the old company constitutes a portion of the cost of acquiring the non-par stock, whereas the item of $13,337.15, interest accrued subsequent to January 1, 1927, on receiver's equipment-trust notes, does not. We find that the reasonable cost of carrying the former item amounted to $46,976.49.

Adding the difference between these interest items or $33,639.34 to the amount of $4,214,774.42 constituting the total payments by, and determined liability of, the Coast Line Company on account of the extinction of the priorities heretofore mentioned, results in the aggregate amount of $4,248,413.76, which we find to be the cost to the Coast Line Company of acquiring the non-par stock.

Based upon the assertion that the reorganization committee conveyed to it the unencumbered title to the properties in consideration of both issues of stock and that it received nothing from the Coast Line Company, the Coast Company's fundamental contention is that the sole measure of value of its issue of non-par stock is to be derived from a valuation of the properties. We have given careful consideration to all of the evidence relating to the value of the properties, and, as hereinafter appears, have made a finding as to their market or fair cash value. Irrespective of the soundness of the Coast Company's basic assertion, an immediate measure of value of the non-par stock would

be the amount contemporaneously paid and agreed to be paid for it by the Coast Line Company.

[fol. 56] It is clear, however, that the Coast Company issued its non-par stock directly to the Coast Line Company in consideration of the latter's payment, assumption, and discharge of the priorities subject to which it took the deed to its properties. The contrary contention is not supported by any competent evidence. It is, moreover, contradicted by all of the facts in the record. Support for it is claimed in the charter provision authorizing the Coast Company to issue its preferred stock and/or its non-par stock for the purpose of acquiring and paying for the property and assets in question. It should not be overlooked that the general authority was to issue and dispose of all or portions of either issue "for such cash, property, real or personal, or other consideration and upon such terms or conditions as may be determined from time to time by the Board of Directors." But the result is the same when the special authority is treated as having been exercised in this instance, because in the exercise thereof the Coast Company did not deal with the holder of an unencumbered title. Its issues of stock were delivered respectively to the holder of an encumbered title and to the holder of part of the encumbrances who assumed the remainder and agreed to discharge them.

The reorganization committee never acquired or conveyed a clear title to the properties and consequently had nothing to exchange for the non-par stock. It did not receive that stock from the Coast Company. Neither did it sell the non-par stock to the Coast Line Company. The latter's right to the ultimate receipt thereof from the Coast Company springs from the agreement of February 23, 1926, which long antedates the Coast Company's acquisition of the properties. That agreement, however, was no more a sale of the non-par stock by the bondholders' committees (or the reorganization committee) to the Coast Line Company than it was a sale by the latter of the preferred stock to the former. The agreement fully defined the functions of the parties thereto providing as it did what each was to acquire and convey to the Coast Company and receive in consideration therefor. The considerations supporting this agreement were the Coast Line Company's undertaking of guaranty with respect to the preferred

stock for the benefit of the committees and the latter's undertaking to vest the encumbered title to the properties in the subsidiary of the former. The testimony of George E. Warren shows that this guaranty was the important thing in the minds of the reorganization committee and that they did not give much consideration to the interest in the properties of the Coast Company to be represented by the preferred stock. In consummating the agreement the reorganization committee conveyed to the Coast Company the bondholders' interest in the properties and received there- [fol. 57] for the preferred stock, while the Coast Line Company assumed the obligations prior thereto, amounting to $4,248,413.76, and received therefor the non-par stock directly from the Coast Company. In their brief, counsel for the Coast Company concede that "delivery of that stock was made in consideration of the payments which the Coast Line Company had made, and which it undertook to make." If this delivery was in fact made upon the direction of the reorganization committee, as counsel contend, such direction was not only superfluous but wholly gratuitous.

We find that the amount to be included by the Coast Company in account 751, "Capital stock", to record its liability on account of the preferred stock, is $5,180,300.

We further find that the consideration received by the Coast Company for its non-par common stock was the extinction by the Coast Line Company of liens, subject to which it took the deed to its properties, in the amount of $4,248,413.76; that such amount was the cash equivalent of that consideration; and that in accordance with the express provisions of the text of account 751, "Capital stock", the maximum amount to be included therein by the Coast Company to record its liability on account of non-par common stock, is $4,248,413.76.

Including the preferred stock at par, we further find that the current cash value of the consideration moving from the Coast Company in the acquisition of its properties did not exceed $9,428,713.76, and that in accordance with the express provisions of the text of account 41, "Cost of road purchased", that sum represents the maximum amount to be apportioned to that company's investment in road and in equipment and to the net amount of other assets and liabilities.

The foregoing findings are independent of the express condition embodied in our order of December 21, 1926. The Coast Company does not repudiate that condition, but contends that, in view of the construction necessarily to be placed thereon, its proposed accounting is in compliance therewith. It is apparent, however, that to construe the words "'amount received" as embracing only money or tangible property would be too narrow and literal.

We find that the amount received by the Coast Company for its issue of non-par stock was the assumption, payment, and discharge by the Coast Line Company of liens against the properties acquired by the former aggregating $4,248,413.76, and that the application of the condition in our order of December 21, 1926, requires the apportionment of the maximum amount of $9,428,713.76 to the Coast Company's investment in road and in equipment and to the net amount of other assets and liabilities.

[fol. 58] The Coast Company further contends that so far as the non-par stock is involved the foregoing findings are not open to us, and that we are restricted to a finding of the valuaation of the properties. In support thereof it urges that the above-mentioned decree of October 26, 1928, constitutes res judicata or that in any event the statement of facts and resulting construction of the condition as set forth in the opinion leading to that decree are controlling here as constituting the law of the case.

But the decree is not res judicata of the relations of the several parties to the transactions involved nor of the meaning of the condition, because it was not on the merits. It expressly provided that the supplemental application of the Coast Company should stand for further hearing before us, without direction for disposition in accordance with the opinion. It did not purport to determine the fundamental controversy there presented nor any of the matters involved in the present investigation. All that it adjudicated was that our order of April 8, 1928, was invalid because entered without affording a hearing.

On the other hand, the mere statement of the doctrine of the law of the case implies that as a prerequisite to its application the expression relied upon must have been made in a prior stage of the same proceeding. It is usually confined to statements of appellate courts.

The proceeding in the district court was not heard on the record which resulted in our order of April 9, 1928. It was an independent and original proceeding involving a trial de novo. Hence, with respect to those proceedings and that herein, constituting as it does an independent investigation on a new record, there is not the relation of identity between any of them which is requisite to the application of the rule of the law of the case. Moreover, it is well settled that the application of the principle of the law of the case is a matter of practice and not compulsory, merely directing discretion as distinguished from power to reexamine a question and decide it differently. Messinger v. Anderson, 225 U. S. 436, 444; Southern R. Co. v. Clift, 260 U. S. 316, 319.

Of course, as held in the case first cited, the court of last resort is not bound by the expression of an inferior tribunal. Herein lies the reason why the doctrine of the law of the case, in the sense that it implies compulsion, must be restricted to expressions of courts of last resort. If it were otherwise, a judgment or order of an inferior tribunal which was compelled by the law might nevertheless be subject to reversal or annulment for error.

Furthermore, the rule under discussion is clearly inapplicable where material new or different evidence is introduced in the subsequent proceeding. In Page v. Natural [fol. 59] Gas & Fuel Co., 35 Fed. (2d) 462, the district court dismissed a suit on the ground that the allegations of the bill showed that the title deraigned by plaintiffs through a predecessor in his representative capacity had been adjudicated against him in both his individual and representative capacities and so conveyed to defendant's predecessor in compliance with the adverse order. The circuit court of appeals, holding that plaintiffs' predecessor had been adjudicated in his individual capacity only and that the conveyance in his representative capacity was ineffective, reversed the decree and remanded for further proceedings consistent with its opinion. Upon retrial (with a successor substituted as defendant) the district court held that it was not bound by the foregoing portion of the appellate court's opinion because the evidence (most of which it seems, however, had been incorporated as exhibits to the original bill) showed that plaintiff's predecessor had been adjudicated in his representative capacity, and dismissed the suit for

want of equity. The circuit court of appeals, although recognizing the doctrine of "the law of the case" as a rule of practice, likewise held that under the circumstances it was not bound by its former decision, sustained the above finding, and affirmed the decree. Page v. Arkansas Natural Gas Corp., 53 Fed. (2d) 27, (affirmed, 286 U. S. 269.)

As a result of the absence of that identity which is requisite to the Coast Company's contention, the present record does not disclose what evidence was before the court, but it must be presumed that the facts were not developed as fully as they are here.

It thus appears that the portions of the court's opinion embracing the statement of facts and the construction of the condition in the order of December 21, 1926, would not have bound us as the law of the case, even in the further hearing on the supplemental petition of the Coast Company directed by the court's decree, and clearly are not so operative herein.

Moreover, since it would be open to the court upon evidence of the nature before us herein, to deny injunction against an order requiring the Coast Company to conform to the accounting prescribed in the foregoing findings, we are not prevented by any rule of law from making the findings which would support such order.

The text of account 41, "Cost of road purchased", read in the light of the general instructions, contemplates that the entry in account 701 shall be based upon the money value of the consideration given. Even if the principles of res judicata and law of case were applied so as to require the conclusive presumption that the Coast Company acquired unencumbered title to the properties from the reorganization committee in consideration of its stock issues, [fol. 60] the condition in the order of December 21, 1926, and the text of account 41, as construed by the court, would lead to the result hereinabove indicated, in view of the material and relevant evidence of the maximum cash value of the properties. In Atlanta, B. & A. Ry. Co. Reorganization, supra, 12, we stated:

Even though we accept the theory that the entries in the accounts of investment should be fixed on the basis of the "fair cash value" of the properties acquired rather than that of the amount paid for them, there is no evidence of lack of parity between the cash value of the consideration

given and that of the property received, considered as that of a going concern. The history of these properties and the circumstances leading to these proceedings are given in considerable detail in the report of October 26, 1926, 117 I. C. C. at pages 182 to 185, inclusive. The facts are undisputed. As there stated, the properties had been operated at great losses for many years, due principally to inherent traffic weakness, although aggravated by a strike of employees. Under these circumstances great difficulty was met in finding a purchaser at any price, with the obligation to operate. As further said in that report, experience only would determine whether or not the investment of the Atlantic Coast Line would be profitable even at the price paid. The contention was then made, but in that instance by the stockholders of the Old Company, that the value found by us under section 19a was evidence of inequity in the price to be paid, but it was pointed out that there was no necessary relationship between the cash or exchange value and value for rate-making purposes, and that the courts had recognized the distinction. From the standpoint of the former owners, the railroad properties had proven to be a liability rather than an asset; and it is apparent that their prospective value to the Atlantic Coast Line lay in their utility as adjuncts of its operating system rather than in the ability of the new company to earn a profit as a separate entity. If the prospect were otherwise, it would be impracticable to recognize that fact in a definite assignment of value.

Without elaborately summarizing the facts, it is sufficient to say that the present record carries conviction of the correctness of those statements.

Clearly, the only pertinent value is that for purposes of sale or exchange. Cost of reproduction is to be given little, if any, weight in determining such value in the absence of evidence that a reasonably prudent man would purchase or undertake the construction of the properties at such a figure. United States v. Boston, C. C. & N. Y. Canal Co., 271 Fed. 877, 889.

It is apparent from the qualification stated in connection with our determination of the value for rate-making purposes of the properties in question, that such valuation was in no sense an expression of market or exchange value. At-

lanta, B. & A. R. Co., supra, 665 et seq. In any event, such prima facie effect as may be accorded that finding by section 19a (i) of the Interstate Commerce Act is overcome by substantial and convincing evidence that the market or fair cash value of the properties was much less as of January 1, 1927.

[fol. 61] In Saratoga & E. V. R. Co., Accounting for Donations, 192 I. C. C. 719, we determined that the acquisition of certain railroad properties should be recorded in the investment account at a figure which was but a fraction of the valuation thereof as found in accordance with section 19a.

As an independently operated railroad, the market value of the properties of the Coast Company, as of January 1, 1927, was little more than nominal and it does not appear that the earning power thereof in the hands of the Coast Line Company could have been substantially increased except at the expense of other lines of the latter. In fact, the conclusion is unavoidable that if their continued operation had been reasonably assured the properties would have yielded more to the Coast Line Company as a connection than as a part of its own system. Under these circumstances the acquisition of control of the properties at an outlay even approaching cost of reproduction would almost inevitably have proved to be burdensome. It is apparent that the preservation of existing traffic with the possibility of future increase constituted the most important consideration to the Coast Line Company. While the closing of the gap in its system was undoubtedly a matter of some importance, the fact remains that the Coast Line Company had been faced with that necessity for many years. On the other hand, abandonment of operation of the properties in question was a matter of increasing imminence.

We find that the market or fair cash value of the properties in question did not exceed the sum of $9,428,713.76, as of January 1, 1927.

Conclusions

We conclude from the foregoing:

1. That neither the principle of res judicata nor law of the case have effect to preclude the making of any of the findings hereinabove stated.

2. That except with respect to the preferred stock, the accounting proposed by the respondent, Atlanta, Birmingham and Coast Railroad Company, violates our accounting classifications and the condition in our order of December 21, 1926, and ignores the current market or cash value of the properties as well as of the securities involved.

3. That an order should be entered requiring the respondent, Atlanta, Birmingham and Coast Railroad Company, to state its accounts in conformity with the foregoing findings.

4. That with respect to respondent, Atlantic Coast Line Railroad Company, no order should be entered herein.

[fol. 62] Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of July, A. D., 1934.

No. 25170

Accounting for Capital Items

(In Re Atlantic Coast Line Railroad Company & Atlanta Birmingham & Coast Railroad Company)

A hearing and investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to eliminate from account 751, "Capital stock", all liability on account of non-par common stock in excess of $4,248,413.76.

It is further ordered, That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to state the balance in account 701, "Investment in road and equipment", in accordance with the classification of investment in road and equipment as provided under account 41, "Cost of road purchased", and in conformity with the preceding paragraph hereof.

And it is further ordered, That this order shall take effect and be in force from and after 30 days from the date of service hereof.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 17, 1934

To the Honorable Judges of said Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. L. 1150 (U. S. Code, Supp. II, Title 28, Sec. 45a), we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, Chief Counsel; Nelson Thomas, Attorney.

Allowed and Ordered filed subject to objections.
In open court, this the 17th day of October, A. D. 1934.
E. Marvin Underwood, U. S. Judge.

[fol. 64] [File endorsement omitted.]

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Oct. 17, 1934

The Interstate Commerce Commission, intervening defendant in the above-entitled suit (hereinafter called the Commission), now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs first and second of the bill of complaint, the Commission, for the purpose of this suit, [fol. 66] admits that the allegations therein contained are

true, except that the Commission denies that the decrees of injunction issued by the United States District Court for the Northern District of Georgia pursuant to opinions reported in 28 F. (2d), 885 and 37 F. (2d) 401, respectively, referred to in paragraph second of the bill of complaint, either prescribed or enjoined or purported to pass upon the correctness of any figures whatever for use in the setting up of complainant's accounts, and the Commission further denies that the language of said paragraph correctly describes the ground upon which the Supreme Court of the United States, in its opinion, reported 282 U. S. 522, states that it reversed the decree in said last-named case before the said District Court, and the Commission respectfully refers the Court to the opinions and decrees aforesaid and to the Commission's report of July 9, 1934, Exhibit B to the petition herein (201 I. C. C. 645, 671), for full, true and correct information as to the same.

II

Answering paragraphs third to thirty-sixth, inclusive, of the bill of complaint, the Commission admits and alleges that on April 9, 1926, Francis R. Hart, George E. Warren, George E. Roosevelt and James H. Perkins, representing committees of holders of defaulted bonds of the Atlanta, Birmingham & Atlantic Railway Company, hereinafter called the A. B. & A. Company, then in receivership, and of the Atlantic & Birmingham Railway Company, filed an application with the Commission pursuant to Section 1, paragraph (18) of the Interstate Commerce Act, in which the applicants, on behalf of said bondholders sought a certificate of public convenience and necessity for the acquisition and operation of the lines of railroad of the A. B. & A. [fol. 67] Company, by a new company to be organized under the name of the Atlanta, Birmingham & Coast Railroad Company, hereinafter called the Coast Company (now complainant herein). That said applicants also applied, under Section 20a, paragraph (2) of the Interstate Commerce Act, for authority of the Commission for the issuance by said Coast Company of $5,180,344.07 par value of preferred stock and 150,000 shares without par value of common stock. After due consideration, the Commission, by its orders of October 26 and December 21, 1926, respectively, granted said applications (see Reorganization and

Control of Atlanta, Birmingham & Atlantic Railroad Co., 117 I. C. C. 181, *Ibid.*, 439), and in the portion of said last-named order relating to the issuance of capital stock, the Commission inserted a condition reading as follows:

> • • • Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, "Cost of road purchased," the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.

That subsequently the said Coast Company accepted said condition and issued the stock authorized by the Commission in said order of December 21, 1926.

The Commission further admits and alleges that under date of January 27, 1927, the Auditor of the Coast Company advised the Commission's Bureau of Accounts that his company desired to set up its investment account upon its books on the basis of the Commission's estimate of cost of reproduction as of June 30, 1914, of the A. B. & A. Company, in a valuation proceeding pursuant to Section 19a of the Interstate Commerce Act, adjusted for additions and retirements to December 31, 1926. For full and com- [fol. 68] plete report of said valuation proceeding the Court is respectfully referred to the Commission's Valuation Docket No. 1, Atlanta, Birmingham & Atlantic Railroad Co., etc., 75 I. C. C. 645. That subsequently the Coast Company transmitted to the Bureau of Accounts a proposed balance sheet as of January 1, 1927, prepared by a firm of certified public accountants, together with a report by that firm setting forth its reasons for said proposed entries. That in the proposed balance sheet there is included in account 701, "Investment in Road and Equipment," $29,471,859, representing the Commission's estimate of cost of reproduction and value of lands as of June 30, 1914, adjusted for additions and retirements to December 31, 1926. It also set up the liability on account of the preferred stock issued by the company at $5,180,300, the par value thereof, and for the non-par common stock, a

liability of $24,553,567.55. That the Commission's Bureau of Accounts objected to the proposed accounting by letter dated August 3, 1927, a true copy of which letter is set out as Exhibit A to the bill of complaint herein. That the Coast Company, on December 29, 1927, filed a supplemental application for such a construction by the Commission of the condition contained in its order of December 21, 1926 (hereinabove set out) as would authorize the accounting proposed by it, for a hearing thereon, and for opportunity to argue the matter orally before the Commission or a division thereof. Said supplemental application was denied by order of the Commission of April 9, 1928, without the Commission fixing any amount whatever at which the complainant would be required to account for its capital stock or its investment in road and equipment.

Thereupon the Coast Company filed its bill of complaint in the District Court of the United States for the Northern [fol. 69] District of Georgia, Atlanta Division, said case being entitled Atlanta, Birmingham & Coast Railroad Co. v. United States of America, In Equity No. 497, in which case the Interstate Commerce Commission intervened as a party defendant. The case coming on to be heard before a statutory court convened pursuant to the directions of the Urgent Deficiencies Act of 1913, the Court held that the order of the Commission of April 9, 1928, had been made without a hearing and therefore should be set aside and annulled. For a full, true and correct statement of the rulings and actions of said Court in said case, the Commission respectfully refers the Court to the official report thereof, published in 28 F. (2d) 885, and to the decree entered therewith.

Whereupon the Commission, in response to the apparent view of the Court that the applicant had not been afforded proper opportunity to support the accounting proposed by it by argument before the Commission, and to afford additional opportunity for the presentation of evidence by the applicant, reopened the proceedings for further hearing and set said matter down for hearing. The Commission heard the matter fully, the Coast Company being represented and participating in said hearing, and under date of October 9, 1929, the Commission made and served its report wherein it found that the entries in the Coast Com-

pany's road and equipment account should be made substantially in the figures indicated by the Commission's Bureau of Accounts in its letter of August 3, 1927, Exhibit A to the bill of complaint herein.

Whereupon the Coast Company filed in the District Court aforesaid in said equity proceeding No. 497, its supplemental bill seeking to set aside the alleged order of the Commission of October 9, 1929, and after hearing said case upon said supplemental bill, the Court, on January 18, 1930, [fol. 70] held that said report was in effect an order of the Commission, subject to be set aside under the terms of the Urgent Deficiencies Act, and entered its order and decree setting aside and annulling the same. For a full, true and correct statement of the findings and holdings of said District Court, the Commission respectfully refers the Court to the official report thereof in 37 F. (2d) 401, and the decree entered therewith.

Whereupon the United States and the Commission appealed from the aforesaid judgment and decree of the statutory court last referred to, to the Supreme Court of the United States, and on February 24, 1931, the Supreme Court reversed the decree of the lower court upon the ground that the report of the Commission did not constitute an "order" of the Commission, jurisdiction to set aside and annul which had been conferred upon the District Court of three judges by the Urgent Deficiencies Act of October 22, 1913, and that, therefore, said statutory court had no jurisdiction to hear or decide the case or to render the decree of January 18, 1930. For a full, true and correct statement of the rulings of said Court in said case, the Commission respectfully refers the Court to the official report thereof and mandate therein, styled United States et al. v. Atlanta, Birmingham & Coast Railroad Co., 282 U. S. 522.

Further answering said paragraphs of the bill of complaint, the Commission admits and alleges that by order dated March 26, 1932, upon its own motion and without formal pleadings, it entered upon an inquiry and investigation concerning the methods employed by the Atlantic Coast Line Railroad Company, hereinafter called the Coast Line Company, in accounting for its investment in the capital stock of the Coast Company, and the methods employed by the latter in accounting for its liability for capital stock [fol. 71] issued and for its investment in road and equip-

ment; that said proceeding was entitled Docket No. 25170, Accounting for Capital Items (In re Atlantic Coast Line Railroad Company and Atlanta, Birmingham & Coast Railroad Company); that notice of said investigation was given to all interested parties as required by the provisions of the Interstate Commerce Act; that subsequent to and in pursuance of said notice the Commission conducted an investigation and accorded to the parties the full hearing provided for in the Interstate Commerce Act; that at said hearing a large volume of testimony and other evidence bearing upon the matters pertinent to said investigation and the subject thereof was submitted to the Commission for consideration on behalf of the parties by their respective counsel and by the Commission's Bureau of Accounts; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission on behalf of all the interested parties by their respective counsel, whereupon the Commission determined said matters and entered and served upon all the interested parties its report and order of July 9, 1934, a true copy of which is attached as Exhibit B to the bill of complaint herein, and is reported in 201 I. C. C. 645, which report and order include the Commission's findings of fact, decision, conclusion, order and requirements in the premises, and that upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order of July 9, 1934 is based.

The Commission further alleges and admits that in said report the Commission set out a full, true and correct statement of the transactions involved in the acquisition [fol. 72] by the Coast Company in January, 1927, of the property and assets previously owned by the A. B. & A. Company, the issuance and delivery by the Coast Company in the acquisition of the aforesaid property and assets formerly owned by the A. B. & A. Company, of $5,180,300 par value 5 per cent guaranteed preferred stock and 150,000 shares of non-par common stock, and the assumption and guaranty of the preferred stock and the acquisition of the common stock by the Coast Line Company. For the details of said transactions, in so far as the Court may deem the same pertinent to the issues herein, the Commission re-

spectfully refers the Court to said report in 201 I. C. C. 645.

Further answering said bill of complaint and particularly paragraph nineteenth thereof, the Commission admits and alleges that at the hearing aforesaid in Docket No. 25170, the complainant herein appeared and contended that the matters involved therein had theretofore been determined by the action of the District Court of the United States for the Northern District of Georgia in equity proceeding No. 497, Atlanta, Birmingham & Coast Railroad Co. v. United States, but the Commission denies that said contention and the statements made by the complainant herein were either true or correct, and the Commission further admits and alleges that neither the principle of res adjudicata nor the law of the particular proceeding then before it had or have the effect of precluding the making of its findings and order of July 9, 1934.

Further answering the bill of complaint and particularly paragraphs twenty-eighth, twenty-ninth, thirtieth, thirty-fourth and thirty-fifth thereof, the Commission denies each of and all the conclusions therein contained and the allegations of fact upon which such conclusions are based. The Commission further alleges that its aforesaid findings and [fol. 73] conclusions, as set out in its report and order of July 9, 1934, were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceedings as aforesaid.

Further answering the bill of complaint, the Commission alleges that in making said report and order of July 9, 1934, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the interested parties to said proceeding by their respective counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that the order of July 9, 1934, was not made either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in said bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the material allegations contained in said bill of complaint in so far as they conflict either with the allegations herein, or with the findings or conclusions of fact included in said report of July 9, 1934.

The Commission particularly denies that as alleged in the bill of complaint, the complainant will suffer either irreparable loss or injury, or loss or injury of any kind, or that complainant will be deprived of any of its legal rights whatever if said order of July 9, 1934, is not annulled and set aside by the Court.

[fol. 74] All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

Nelson Thomas, Attorney for Interstate Commerce Commission. Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.

[fol. 75] [File endorsement omitted.]

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES OF AMERICA—Filed Oct. 20, 1934

The United States, defendant in the above entitled cause, for answer to the complaint filed therein against it, answers and says:

I

The United States admits that the matters, things and conclusions alleged in the First and Second divisions of the Complaint are true, with this exception: The United States denies that the decrees issued by this Court pursuant to its opinions reported in 28 F. (2d) 885 and 37 F. (2d) 401, respectively, either prescribed or enjoined or purported to

pass upon the correctness of any figures whatever for use in setting up complainant's accounts. For full and complete information concerning the statements and requirements of this Court in its previous opinions and decrees, and the statement and requirements of the Supreme Court in its decision reported in 282 U. S. 522, mentioned in said Second division of the Complaint, the Court is respectfully referred to the full text thereof.

[fol. 77] II

The United States admits for the purposes of this suit that the matters, things and conclusions alleged in the Third to the Fourteenth divisions, inclusive, of the Complaint are true, with these exceptions: (1) United States denies that the agreement mentioned in the Fourth division provided that "the new company so to be organized should, in payment for the property so to be acquired by it from the purchasers at said foreclosure sale," issued stock as therein alleged, and further denies that complainant has issued its stock "in payment" for the railroad properties acquired and now owned by it, as alleged in said Fourth division of the Complaint; and, (2) United States denies that the Seventh division of the Complaint contains a full, fair or accurate description of the Commission's statements and conclusions set forth in its reports and orders therein mentioned, and for full information thereof, the Court is respectfully referred to the complete text of said reports and orders which are officially recorded in 117 I. C. C. at pages 181 and 439.

III

The United States admits the allegations of the Fifteenth division of the Complaint, except that it denies the conclusions therein stated concerning the opinion and decree of this Court dated October 29, 1928, and respectfully refers the Court thereto for full and complete information.

IV

The United States admits that the allegations contained in the Sixteenth, Seventeenth and Eighteenth divisions of the Complaint are true, except that it denies that said [fol. 78] Sixteenth and Seventeenth divisions correctly con-

strue the decision and decree of this Court dated January 18, 1930, or the decision of the Supreme Court, and for accurate and complete information concerning the holdings and requirements therein, this Court is respectfully referred to the full text thereof.

V

Answering the Nineteenth division of the Complaint, the United States admits that the Commission held a full, adequate and proper hearing in its said docket No. 25170 which was completed in July, 1932, that its examiner duly made and filed his proposed report, and that on July 9, 1934, the Commission made and rendered its report and order in the premises, and that Exhibit B to the Complaint is a true copy thereof. The United States denies that any other allegations of said Nineteenth division of the Complaint are either relevant or material to any issue which may properly be raised in this suit.

VI

Answering the Twentieth division of the Complaint, the United States denies that the matters, things and conclusions therein stated are relevant or material to the question raised by the Complaint whether the Commission's said order of July 9, 1934, is lawful, and to that report and order, annexed as Exhibit B to the Complaint, the United States respectfully refers the Court for full, complete and accurate information concerning the facts and statements therein set forth. Further answering said Twentieth division, the United States alleges that, as shown by said Exhibit B, the Commission, at page 671 thereof, made its finding concerning the fair market or cash value of complainant's properties as of January 1, 1927, upon consideration of evidence in the record before it.

[fol. 79] VII

The United States denies the matters, things and conclusions alleged in the Twenty-First, Twenty-Second, Twenty-Third, Twenty-Fourth and Twenty-Fifth divisions of the Complaint, and denies that the Commission's order of July 9, 1934, is unlawful or void for the reasons therein alleged or for any other reasons.

VIII

Answering the Twenty-Sixth division of the Complaint, the United States admits that the Commission, acting under the provision of Section 19a of the Interstate Commerce Act has fixed the value, as of June 30, 1914, of the property now owned by complainant, but United States denies that the valuation so placed upon the properties has any relevancy, whatever, to the "cost of road purchased" or to "investment in road and equipment" or to the amount of cash or value of the consideration received by complainant for its non-par common stock, or to any other question which may properly be raised in this suit.

IX

Answering division Twenty-Seventh of the Complaint, the United States says that the Commission's order of July 9, 1934, has by it been postponed so that the date upon which said order is to take effect is November 1, 1934.

X

The United States denies the allegations and conclusions alleged and set forth in the Twenty-Eight, Twenty-Ninth and Thirtieth divisions of the Complaint.

XI

Answering the Thirty-First, Thirty-Second, Thirty-Third and Thirty-Fourth divisions of the Complaint, the United States admits that complainant is subject to fines [fol. 80] and penalties provided by Section 20 of the Interstate Commerce Act for refusal to obey the Commission's said order of July 9, 1934, and that said section of that Act requires complainant to keep its accounts in the form prescribed by the Commission and prohibits complainant from keeping accounts in any other form.

XII

The United States denies all allegations in the Thirty-Fifth division of the Complaint to the effect that complainant will suffer irreparable damage unless the Commission's said order of July 9, 1934, is enjoined and annulled.

XIII

Except as herein expressly admitted, United States denies each and every allegation contained in the Complaint and in the several divisions and subdivisions thereof.

Wherefore, having fully answered the Complaint, United States prays that the relief therein prayed be denied, and that the Complaint be dismissed at complainant's cost, and that United States have the benefit of such other and further orders, decrees, or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Lawrence S. Camp, United States Attorney. Harold M. Stephens, Assistant Attorney General.

[fol. 81] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fols. 82-168] [File endorsement omitted.]

[fol. 169] IN UNITED STATES DISTRICT COURT

Excerpts From Transcript of Record in U. S. Supreme Court, Case No. 88, October Term

Exhibit 5—Reorganization of Atlanta, Birmingham and Atlantic Railway Company—Agreement between Atlantic Coast Line Railroad Company and committees, dated February 23, 1926

[Stamped:] Interstate Commerce Commission. Ex. No. 5. Applicant's Docket No. 5454, 5470. Date, May 20, 1926. Witness: Warren.

Agreement made this 23rd day of February, 1926, between George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under the deposit agreement dated December 7, 1921, with respect to the fifteen-year five per cent income mortgage gold bonds of Atlanta, Birmingham and Atlantic Railway Company, and Francis R. Hart, James H. Perkins, Percy R. Pyne 2nd, F. J. Lisman, and George Bramwell Baker, as the committee acting under the bondholders'

agreement dated September 26, 1921, in respect of the first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (said committees being hereinafter called the committees and said bonds of both issues being hereinafter called the bonds) and Atlantic Coast Line Railroad Company (hereinafter called the railroad company).

The mortgages securing the bonds are in the process of foreclosure in the United States District Court for the Northern District of Georgia, as the court of primary jurisdiction, and also in the United States District Courts for the Southern District of Georgia, for the Middle District of Alabama, for the Northern District of Alabama, and for the Southern District of Florida, as courts of ancillary jurisdiction, in foreclosure proceedings and in proceedings instituted by general creditors' bill, and the properties of Atlanta, Birmingham and Atlantic Railway Company (hereinafter called the old company) including the properties subject to said mortgages or either of them are now in the hands of a receiver appointed by said United States District Court for said Northern District of Georgia and in said other District Courts. Said United States District Court for the Northern District of Georgia is hereinafter called the court.

Foreclosure proceedings are also pending in the court and in said other District Courts in respect of the foreclosure of a certain mortgage securing first and refunding mortgage bonds of the Old Company. It is, however, expected that the holders of said bonds can be settled with in cash on the basis of the principal and interest of the debts for [fol. 170] which they held or hold said bonds as collateral, so that it will not be necessary to proceed further with the foreclosure proceedings in respect of said bonds or to provide for said bonds in the plan (hereinafter referred to and herein called the plan), but it is recognized that the cash requirements in the amount set forth in Exhibit A hereinafter mentioned may have to be increased so as to include provision for the payment of principal and interest of all or part of said bonds held as collateral for such debts. In the event that the New Company shall acquire said properties, said mortgage securing said bonds is to be released and discharged.

It is proposed to form under the laws of Georgia, or of some other State if desirable and permissable, a new company (hereinafter called the New Company) to be called the Atlanta, Birmingham and Atlantic Railroad Corporation or by some other name to be agreed upon.

It is proposed that the New Company shall acquire said properties of the Old Company as aforesaid (including property held by the receiver) by foreclosure sale or sales, through the above-mentioned foreclosure proceedings and sale under said general creditors' bill so that there shall be acquired by the New Company all mortgaged and unmortgaged assets of the Old Company and/or of the receiver, subject to such changes in said properties as may occur in the ordinary conduct of business and/or as may be approved by the court.

Witnesseth:

The parties hereto, for and in consideration of the covenants and promises hereinafter recited, do hereby agree with each other as follows:

I. Capitalization of the New Company

The New Company is to have a capitalization as follows:

(1) Preferred stock (authorized) $5,200,000 par value: To have a par value of $100 per share; to be preferred as to dividends over common stock; to be entitled and limited to 5% cumulative dividends, payable semiannually accruing from one year after the date on which possession of said properties shall be vested in the New Company; such preferred stock to be entitled and limited in the event of any liquidation, dissolution or winding up, voluntary or involuntary, to $100 and accrued dividends per share before any assets shall be distributed to the common stock; to be redeemable as a whole but not in part, at the option of the New Company, at 103 and accrued dividends on any semiannual dividend payment date after January 1, 1935, upon three months' notice to each holder of record of preferred stock mailed to his address as then recorded on the books for dividend payments and upon publication of a notice of redemption once a week for four successive weeks immediately preceding the redemption date; to have no power to vote except in case of continuing default in the payment of two semiannual dividends, in which case the preferred

[fol. 171] stock is to have exclusive voting power so long as any default continues; dividends at the rate aforesaid and the redemption of the preferred stock as hereinafter provided to be guaranteed by the Railroad Company by unsigned endorsement upon the preferred stock certificates, which endorsement shall refer to an appropriate instrument of guaranty wherein the Railroad Company shall guarantee such dividends and shall also guarantee to redeem the preferred stock at 103 and accrued dividends in case of liquidation, dissolution or winding up, voluntary or involuntary, of the New Company, or in case of any merger or consolidation of the New Company, or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of the New Company, while any preferred stock shall be outstanding. Appropriate provision shall be made so that said guaranty in respect to the dividends on the preferred stock and the redemption thereof as herein provided shall not be subject to any change or modification through agreement between the New Company and the Railroad Company. No debt or obligation which may at any time be or become due and owing by the New Company to the Railroad Company shall be used as a set-off, counterclaim or defense to any obligation of the Railroad Company in respect of the redemption of the preferred stock and/or the payment of dividends thereon. The preferred stock shall be prepared in form for listing upon the New York Stock Exchange, and upon request of the committees the New Company will make application for such listing and shall comply with the requirements with respect thereto.

No additional preferred stock and no stock ranking on a parity with or having priority over the preferred stock shall be issued without the affirmative vote or written consent of the holders of three-fourths of the preferred stock then outstanding. This provision shall not apply to equipment trust certificates issued on the so-called "Philadelphia plan."

The New Company shall be authorized by its charter to issue in addition to the two classes of stock herein mentioned, notes and/or bonds whether or not secured by mortgage upon the railroad properties of the New Company, including equipment and/or other assets specifically named without the assent of the preferred stock or the common stock except as may be required by law.

(2) Common stock (authorized) 150,000 shares:

To be without par value; to have sole voting power except as hereinabove otherwise provided with respect to the voting power of the preferred stock; to be entitled in case of liquidation, dissolution or winding up, voluntary or involuntary, of the New Company to remaining assets after preferred stock has received $100 per share and accrued dividends.

II. Acquisition of Properties by the New Company

The committees, subject to the approval of the requisite percentages of the bonds which the committees respectively [fol. 172] represent, upon promulgation of the plan, agree to endeavor to cause said properties to be acquired by the New Company as herein provided, and to that end the committees, subject as aforesaid, will bid for said properties at said sale or sales an amount or amounts up to, but, unless directed by the Railroad Company, not in excess of $4,500,000 in addition to the indebtedness of the Old Company prior to the mortgages securing the bonds, equipment obligations and obligations of the receiver substantially as set forth in Exhibit A hereinafter mentionel. The Railroad Company will upon request of the committee furnish to the committees or to their nominee or nominees certified checks for any amount or amounts required to enable the committees or their nominee or nominees to qualify as bidders at said sale or sales which the court may require in addition to the deposit of bonds held by the committees or either of them, and after confirmation of such sale or sales by the court and upon the acquisition of said properties by the New Company, subject only to such of the items included in Exhibit A hereinafter mentioned as may not have been already discharged, the Railroad Company will reimburse the committees or their nominee or nominees for payments of such portion of the purchase price of said properties so sold as may have theretofore been required from time to time by the court to be paid in cash. Insofar as any amounts so furnished to the committees or to their nominee or nominees shall not be used or required as aforesaid the same shall be returned to the Railroad Company by the Committees or their nominee or nominees, whoever shall have received such amounts so furnished, as the case may

be, but as to any and all amounts so furnished which shall be paid as required by or pursuant to any decree or order of the court, the committees and their nominee or nominees shall be relieved from all liability or accountability to the Railroad Company, but the Railroad Company, upon full performance of all of its obligations hereunder, shall be subrogated to the rights of the committees or their nominee or nominees in respect of said payment or payments. Nothing herein shall obligate the committees to bid at such sale or sales unless the committees or their nominee or nominees shall have been furnished with the requisite funds as hereinbefore provided. If the court shall confirm a bid which shall not have been made by or on behalf of the committees, the bonds represented by the committees shall receive their distributive share of the proceeds of sale made pursuant to any such bid, and the committees shall be relieved from all liability to the Railroad Company except for the return to the Railroad Company of the amounts, if any, furnished by the Railroad Company to qualify bidders if such amounts are repaid to the committees.

The sum of $100,000 received on or about September 20, 1920, by the trustee under the mortgage securing said fifteen-year five per cent income mortgage gold bonds, together with any interest thereon, wherever the plan shall be consummated, after deducting therefrom all expenses and charges of the committee formed under said deposit [fol. 173] agreement not otherwise provided for, shall be distributed when and as determined by said committee in its discretion to the holders of said income bonds and neither the New Company nor the Railroad Company shall be entitled to receive any part of said sum.

III. Cash Requirements for Reorganization

A statement of the total cash requirements for the reorganization and the acquisition of said properties by the New Company is hereto attached as Exhibit A except that the amount stated in Exhibit A does not include cash payments which the court may require to be made under the bids for purposes not mentioned in Exhibit A.

In case the New Company shall acquire said properties the Railroad Company shall provide cash for the cash requirements specified in Exhibit A, as herein provided, and in addition thereto, the Railroad Company shall be obligated in

case the New Company shall acquire said properties as herein provided to provide cash sufficient to meet the respective distributive shares in the proceeds of said sale or sales in respect of any of the bonds which shall not assent to the plan as herein provided, or to reimburse the committees for any amounts which may have theretofore been paid or provided for that purpose by the committees.

The Railroad Company shall be entitled to receive the entire issue of 150,000 shares of common stock of the New Company in exchange for the cash which the Railroad Company shall provide hereunder.

IV. Treatment of Holders of the Bonds and Other Creditors of the Old Company

1. Each holder of the bonds who shall assent to the plan shall receive in exchange for his bonds $60 par value of preferred stock of the New Company for each $100 principal amount of bonds held by him and deposited by him in accordance with the provisions of the plan.

2. Each holder of bonds who shall not assent to the plan and deposit his bonds thereunder shall receive in cash his pro rata distributive share, as fixed by the court, of the proceeds of sale of said properties. In so far as the holders of any of the bonds shall not elect, by assenting to the plan, to take preferred stock of the New Company in lieu of their respective distributive sh ares in the proceeds of said sale or sales, the preferred stock of the New Company which would have been issued to such bondholders had they made such election shall be issued to the Railroad Company.

3. All claims admittedly having or adjudged to have priority over any of the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company held by the United States Government (if it is necessary to pay off the same) and obligations of the receiver shall be paid in cash by the Railroad Company upon the acqusition of said properties by the New Company as [fol. 174] aforesaid, except that obligations of the Old Company and/or of the receiver not matured at the time of the acquisition of said properties by the New Company may be assumed by the New Company instead of being paid in cash, but the Railroad Company shall provide or cause the

New Company to provide the necessary cash to pay such obligations as they mature. All of such obligations (but without interest thereon in full) are set forth in Exhibit A.

4. In case said properties shall be acquired by the New Company and the Railroad Company shall perform all its obligations hereunder the distributive shares in the proceeds of said sale or sales payable in respect of all the bonds now or hereafter deposited with the committees which shall assent to the plan shall be credited on the purchase price of said properties.

V. Receivership, Reorganization, and Miscellaneous Expenses and Allowances

All compensation and expenses of the committees and their counsel and compensation and expenses of the respective trustees under the three mortgages above referred to and of counsel for the said trustees, and compensation and expenses of the reorganization committee (hereinafter referred to) and their counsel, and allowances to and expenses of all other counsel involved in the receivership proceedings, allowances to the receiver and special masters and all other reorganization expenses and expenses of the organization of the New Company and the issue of its securities and all other expenses connected with the acquisition by the New Company of said properties (such compensation, allowances, and expenses not to exceed in the aggregate $600,000), shall be paid in cash by the Railroad Company upon the acquisition of said properties by the New Company as aforesaid.

VI. Promulgation of Plan

The committee shall join in promulgating a reorganization plan (herein called the plan) for the purpose of carrying out the provisions hereof, and the committees shall exercise due diligence in endeavoring to cause said properties to be acquired by the New Company as herein provided.

VII. Reorganization Committee

The committees may appoint a joint reorganization committee consisting of such members as the committees may determine, and such reorganization committee, if the committees shall so prescribe in connection with the consti-

tution of such reorganization committee, may be substituted for the committees in respect of all or any action to be taken by the committees and in respect of the rights of the committees hereunder. Such reorganization committee and the railroad company may agree from time to time upon such [fol. 175] changes or modifications hereof as they may deem advisable so far as may be permitted by the plan.

VIII. Waiver of Personal Liability of Committees

The obligations hereby created are obligations of the committees which they are authorized to assume under the agreements under which they are respectively acting, subject, however, to the provisions of said agreements with regard to dissent and withdrawal. No member of either of the committees or of the reorganization committee assumes, or shall have, any individual responsibility or liability hereunder or for the result of any steps taken or acts done or to be done pursuant hereto. Any member of either of the committees and/or of the reorganization committee and/or any firm or corporation of which such member may be a member, director, or officer may individually own or be otherwise interested in the bond and/or any of the stocks, bonds, or other securities of the Railroad Company and/or of the New Company and/or the Old Company.

IX. Miscellaneous

This agreement shall be subject:

(1) To the deposit with the committees of at least $7,000,000 principal amount of the bonds on or before September 1, 1926.

(2) To the plan being declared operative by the committees.

(3) To the approval of the Interstate Commerce Commission and any other public authority having jurisdiction.

The Railroad Company and the committees will cooperate to the end that the approval of the Interstate Commerce Commission and other public authorities, if any, having jurisdiction in respect hereof shall be had as promptly as may be.

All legal proceedings and papers shall be subject to ap- Railroad Company.

proval by counsel for the committees and by counsel for the

This agreement shall be construed strictly as an agreement among the parties hereto and as solely affecting and relating to the committees and the Railroad Company, and no bondholder or other person, firm, or corporation other than the parties hereto shall have any right or liability hereunder.

Nothing in this agreement shall obligate the committees to provide any cash hereunder unless the same shall be furnished to the committees by the Railroad Company.

In the event that the Railroad Company shall not direct the commitees to bid at any sale or sales of said properties an amount in excess of that specified in Article II hereof, the committees or their nominee or nominees may in the discretion of the committees bid any amount or amounts in excess thereof, and in that event if the committees or their nominee or nominees shall be the successful bidder or bidders at said sale or sales the Railroad Company shall have no claim or right in respect of said properties acquired at said sale or sales or against the committees or their nomi-
[fol. 176] nee or nominees, except for the return of such amount or amounts, if any, as may have been furnished by the Railroad Company to the committees or their nominee or nominees to qualify a bidder or bidders at said sale or sales, and the Railroad Company shall be under no further obligation hereunder.

This agreement may be executed in any number of counterparts which shall constitute but one and the same instrument.

In witness whereof each of the committees has caused these presents to be duly executed by a majority of its members and the Railroad Company has caused the same to be duly executed and sealed by its officers thereunto duly empowered, all as of the day and year first above written.

George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under said deposit agreement dated December 7, 1921, and not individually, by George E. Warren, E. P. Maynard, Joseph P. Bradshaw, Charles F. Ayer, George E. Roosevelt, a majority of said committee.

Francis R. Hart, James H. Perkins, Percy R. Pyne, 2nd, F. J. Lisman, and George Bramwell Baker, as

the committee acting under said bondholders' agreement dated September 26, 1921, and not individually, by Francis R. Hart, George Bramwell Baker (by Philip Young, proxy), F. J. Lisman, James H. Perkins, Percy R. Pyne, 2nd (by J. H. Perkins, atty.), a majority of said committee.

Atlantic Coast Line Railroad Company, by H. Walters, Chairman. (Corporate Seal.) Attest: H. L. Borden, Secretary.

Exhibit A

(The amounts stated herein are approximate estimates, and interest where included has not been brought down to date.)

1. Taxes to December 31, 1925	$375,000
2. Materials and supplies	745,000
3. Birmingham Trust & Savings Bank loan	114,000
4. National Bank of Commerce loan	351,000
5. United States Government matured notes	293,000
6. United States Government unmatured loan	100,000
7. United States Government unmatured equipment notes	655,000
8. Unmatured notes for rebuilding equipment	444,500
9. Receivership, reorganization, and miscellaneous expenses and allowances	600,000
Total	3,677,500

[fol. 177] Exhibit 6—Atlanta, Birmingham and Atlantic Railway Company—Plan and Agreement of Reorganization, Dated February 23, 1926

Reorganization committee: Francis R. Hart, vice chairman, Old Colony Trust Company, Boston; James H. Perkins, president, the Farmers' Loan and Trust Company, New York City; George E. Warren, vice president, the Chase National Bank of the City of New York, New York City; George E. Roosevelt, of Roosevelt & Son, New York City.

Depositaries: Irving Bank-Columbia Trust Company, 60 Broadway, New York City; Old Colony Trust Company,

17 Court Street, Boston; the Farmers' Loan and Trust Company, 22 William Street, New York City.

[Stamped:] Interstate Commerce Commission. Ex. No. 6. Applicant's Docket No. 5454, 5470. Date May 20, 1926. Witness: Warren.

Atlanta, Birmingham and Atlantic Railway Company

Plan of Reorganization

This plan of reorganization of Atlanta, Birmingham and Atlantic Railway Company (hereinafter called the Old Company) has been prepared and adopted by George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under the deposit agreement dated December 7, 1921, with respect to fifteen-year five per cent income mortgage gold bonds of the Old Company (hereinafter called the income bonds) and Francis R. Hart, James H. Perkins, Percy R. Pyne 2nd, George Bramwell Baker, and F. J. Lisman, as the committee acting under the bondholders' agreement dated September 26, 1921, in respect of first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (hereinafter called the first mortgage bonds).

I. Introductory Statement

This plan is based upon and promulgated pursuant to an agreement dated February 23, 1926, between said committees and Atlantic Coast Line Railroad Company (hereinafter, and in the agreement of reorganization hereto annexed, called the Railroad Company. Copies of said agreement are on file with the depositaries hereinafter mentioned, and may there be examined by any holder of income bonds or of first mortgage bonds or of certificates of deposit representing either thereof, but nothing herein contained shall be taken as a representation, express or implied, as to the provisions of said agreement. This plan and said agreement of reorganization are herein sometimes called the plan and agreement.

Due to the insufficient earnings of the properties, it has not been feasible to work out a plan for the independent re- [fol. 178] organization of the properties that could be financed. No proposition has been received by the commit-

tees that seemed as satisfactory as the one contained in said agreement between the committees and the Railroad Company.

$4,090,000 principal amount of first mortgage bonds are outstanding in the hands of the public.

$4,543,906.78 principal amount of income bonds (or scrip representing the same) are outstanding in the hands of the public (exclusive of $400,000 principal amount held by the United States Government as collateral for a loan made to the Old Company and $256,093.22 principal amount held in the treasury of the Old Company).

The mortgages securing the income bonds and the first mortgage bonds are in process of foreclosure, and the properties of the Old Company are in the hands of a receiver appointed in such foreclosure proceedings and in proceedings instituted by a general creditors' bill.

It is proposed that the plan be accomplished through the formation of a new company (hereinafter called the New Company) to acquire the properties of the Old Company, including property held by the receiver, by sale or sales in the above-mentioned proceedings so that the New Company shall acquire all mortgaged and unmortgaged assets of the Old Company and the receiver, subject to such changes therein as may occur in the ordinary conduct of business and/or as may be approved by the court or courts having jurisdiction in respect of said assets or any part thereof.

All claims admittedly having or adjudged to have priority over any of the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company held by the United States Government (if it is necessary to pay off the same) and obligations of the receiver are to be paid in cash by the Railroad Company upon the acquisition of said properties by the New Company, except that obligations of the Old Company and/or of the receiver which have not matured at the time of the acquisition of said properties by the New Company may be assumed by the New Company instead of being paid in cash.

No provision is made in the plan for the stock of the Old Company.

The plan and said agreement between the committees and the Railroad Company are subject to the approval of the In-

terstate Commerce Commission and of any other public authority having jurisdiction.

II. Capitalization of New Company

(1) Preferred stock (authorized) $5,200,000 par value: To have a par value of $100 per share; to be preferred as to dividends over common stock; to be entitled and limited to 5% cumulative dividends, payable semiannually accruing [fol. 179] from one year after the date on which possession of said properties shall be vested in the New Company; such preferred stock to be entitled and limited in the event of any liquidation, dissolution or winding up, voluntary or involuntary, to $100 and accrued dividends per share before any assets shall be distributed to the common stock; to be redeemable as a whole but not in part, at the option of the New Company, at 103 and accrued dividends on any semiannual dividend payment date after January 1, 1935, upon three months' notice to each holder of record of preferred stock mailed to his address as then recorded on the books for dividend payments and upon publication of a notice of redemption once a week for four successive weeks immediately preceding the redemption date; to have no power to vote except in case of continuing default in the payment of two semiannual dividends, in which case the preferred stock is to have exclusive voting power so long as any default continues; dividends at the rate aforesaid and the redemption of the preferred stock as hereinafter provided to be guaranteed by the Railroad Company by unsigned endorsement upon the preferred stock certificates, which endorsement shall refer to an appropriate instrument of guaranty wherein the Railroad Company shall guarantee such dividends and shall also guarantee to redeem the preferred stock at 103 and accrued dividends in case of liquidation, dissolution or winding up, voluntary or involuntary, of the New Company, or in case of any merger or consolidation of the New Company, or any transfer or conveyance, whether by operation of law or otherwise, of all or a substantial part of the property of the New Company, while any preferred stock shall be outstanding. Appropriate provision shall be made so that said guaranty in respect to the dividends on the preferred stock and the redemption thereof as herein provided shall not be subject to any change or modification through agreement between the New Company

and the Railroad Company. No debt or obligation which may at any time be or become due and owing by the New Company to the Railroad Company shall be used as a set-off, counterclaim or defense to any obligation of the Railroad Company in respect of the redemption of the preferred stock and/or the payment of dividends thereon.

The preferred stock shall be prepared in form for listing upon the New York Stock Exchange and upon request of the reorganization committee the New Company will make application for such listing.

No additional preferred stock and no stock ranking on a parity with or having priority over the preferred stock shall be issued without the affirmative vote or written consent of the holders of three-fourths of the preferred stock then outstanding. This provision shall not apply to equipment trust certificates issued on the so-called "Philadelphia plan."

The New Company shall be authorized by its charter to issue in addition to the two classes of stock herein men- [fol. 180] tioned notes and/or bonds whether or not secured by mortgage upon the railroad properties of the New Company, including equipment and/or other assets specifically named without the assent of the preferred stock or the common stock except as may be required by law.

(2) Common stock (authorized) 150,000 shares:

To be without par value; to have sole voting power except as hereinabove otherwise provided with respect to the voting power of the preferred stock; to be entitled in case of liquidation, dissolution, or winding up, voluntary or involuntary, of the New Company to remaining assets after preferred stock has received $100 per share and accrued dividends.

III. Cash Requirements

The total cash requirements are estimated to be $3,677,500 (in addition to cash payments which the court having jurisdiction may require to be made under the bids), and provision is made in said agreement between the committees and the Railroad Company whereby the Railroad Company is to provide such cash in the amounts and upon the conditions in said agreement set forth. The Railroad Company shall be entitled to receive the entire issue of 150,000 shares without par value of common stock of the New Com-

pany in exchange for the cash which the Railroad Company shall provide.

IV. Treatment of Bonds

Each holder of income bonds and each holder of first-mortgage bonds and each holder of a certificate of deposit representing any of said bonds who assents to and becomes a party to the plan shall, upon completion of the reorganization, be entitled to receive in exchange for his bonds or certificates of deposit $60 par value of preferred stock of the New Company for each $100 principal amount of said bonds (with coupons appertaining thereto as specified in Article V hereof) held by him and heretofore or hereafter deposited in accordance with the provisions of the plan and agreement.

No provision is made in the plan for any holder of income bonds or of first-mortgage bonds or of certificates of deposit representing either thereof who shall not participate in the plan as provided in the plan. Any preferred stock of the New Company which would have been issued to such boldholders had they so participated in the plan shall be issued to the Railroad Company.

V. Method of Participation in Plan

Holders of income bonds not heretofore deposited under said deposit agreement, who desire to assent to and become parties to the plan and agreement, must, within such period as may be fixed by the reorganization committee, deposit with Irving Bank-Columbia Trust Company, No. 60 Broadway, New York City as depositary under said deposit [fol. 181] agreement, their said bonds and receive therefor appropriate certificates of deposit issued under said deposit agreement stamped as assenting to the plan and agreement and shall by acceptance thereof waive any and all right of withdrawal given by said deposit agreement. Coupon income bonds must be accompanied by coupon No. 9 and subsequent coupons.

Holders of first-mortgage bonds not heretofore deposited under said bondholders' agreement, who desire to assent to and become parties to the plan and agreement, must, within such period as may be fixed by the reorganization committee, deposit with Old Colony Trust Company, 17 Court Street, Boston, Mass., or the Farmers' Loan and Trust

Company, 22 William Street, New York City, as depositary under said bondholders' agreement, their said bonds, and receive therefor appropriate certificates of deposit issued under said bondholders' agreement stamped as assenting to the plan and agreement and shall by acceptance thereof waive any and all right of withdrawal under said bondholders' agreement. Coupon first-mortgage bonds so deposited must be accompanied by the coupon due July 1, 1921, and all subsequent coupons.

Registered bonds deposited as above provided must be accompanied by such endorsements, assignments, powers of attorney, and other instruments as may be required by the reorganization committee in order to transfer title thereto.

Holders of certificates of deposit for income bonds or first-mortgage bonds, who shall not exercise within the time, in the manner and upon the terms specified in the respective agreements under which such certificates of deposit may be issued, the rights of withdrawal conferred by said agreements respectively, shall be conclusively deemed to have assented to the plan and agreement and to have deposited their bonds thereunder and shall become parties to the plan and agreement without the issue of new certificates of deposit or any stamping of said certificates. Holders of said certificates of deposit may, however, at any time, present their certificates of deposit for the purpose of having such certificates stamped as assenting to the plan and agreement.

VI. Reorganization Committee

The plan and agreement are to be carried out under the supervision and direction of a reorganization committee of which the original members shall be Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins (herein called the reorganization committee).

Except as herein otherwise expressly provided, the forms and terms of all agreements, instruments, and papers, and all proceedings for carrying out the plan and agreement shall be such as the reorganization committee may direct or approve. The reorganization committee shall have the power to determine when the holders of bonds of a sufficient principal amount shall have assented to the plan and agreement to make it advisable to declare the plan operative.

[fol. 182] The reorganization committee is substituted for the committees, in respect of all or any action to be taken by the committees and in respect of the rights of the committees, under said agreement between the committees and the Railroad Company. The plan and agreement are expressly made subject to the provisions of said agreement between the committees and the Railroad Company, and in case of any inconsistency between said last mentioned agreement and the plan and agreement the provisions of said last-mentioned agreement shall govern in so far as the reorganization committee in its discretion shall deem advisable. The reorganization committee may change or modify said agreement between the committees and the Railroad Company, and no such change or modification shall be deemed a change or modification of the plan and agreement unless the same shall materially adversely affect the holders of bonds who shall have assented to the plan and agreement, in which event such change or modification shall be subject to the provisions of article seventh of said agreement of reorganization.

For a further statement of the powers of the reorganization committee, reference is made to said agreement of reorganization. In case of any conflict or inconsistency between the plan and agreement, the latter shall govern.

Atlanta, Birmingham and Atlantic Railway Company

Agreement of Reorganization

Agreement made as of the 23rd day of February, 1926, between Francis R. Hart, George E. Warren, George E. Roosevelt, and James H. Perkins, as the reorganiaztion committee constituted by the foregoing plan and this agreement (hereinafter called the reorganization committee), parties of the first part:

George B. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer, and George E. Roosevelt, as the committee acting under the deposit-agreement dated December 7, 1921, with respect to fifteen-year five per cent income mortgage gold bonds of Atlanta, Birmingham and Atlantic Railway Company (hereinafter called the Old Company), and Francis R. Hart, James H. Perkins, Percy R. Pyne 2nd, George Bramwell Baker, and F. J. Lisman, as the committee acting under the bondholders' agreement dated Septem-

ber 26, 1921, with respect to first mortgage five per cent 5/30 gold coupon bonds of Atlantic & Birmingham Railway Company (said committees being hereinafter called the committees and said bonds of both issues being hereinafter called the bonds), parties of the second part; and

Holders of the bonds and/or certificates of deposit for any of the bonds who shall become parties hereto in the manner herein and in the plan provided, their transferees, successors and assigns (hereinafter called assenting bondholders), parties of the third part;

Witnesseth:

The parties hereto, for and in consideration of the covenants and promises hereinafter recited, and for the purpose [fol. 183] of consummating the foregoing plan for the reorganization of the Old Company, or some modified or substituted plan as hereinafter provided for, have mutually agreed and hereby do severally agree with each other as follows:

First. The foregoing plan (hereinafter called the plan) is hereby adopted and approved, and shall be taken to be a part of this agreement with the same effect as though each and every statement and provision thereof had been repeated and embodied herein, and the plan and this agreement shall constitute and be read as parts of one and the same instrument; but no estimate, statement, explanation or suggestion contained in the plan or this agreement, or in a certain agreement between the Railroad Company and the committees referred to in the plan, or in any letter or circular issued or which may hereafter be issued by or on behalf of the reorganization committee or the committees, or either of them, is intended or is to be taken as a representation or warranty, or as an inducement or a condition of assent under or to the plan or this agreement, and no defect, error or omission therein shall release any party hereto except by written consent of the reorganization committee.

Second. The reorganization committee may act by a majority of its members either at a meeting or in writing without a meeting. Any member of the reorganization committee may vote or act by proxy (who may be another member of such committee) and the vote or act of such proxy shall be as effective as the vote or act of the member ap-

pointing such proxy. In case of the resignation, death, or inability to act of George E. Warren or George E. Roosevelt or any successor of either of them, the committee acting under said deposit agreement dated December 7, 1921, may appoint a successor; and in case of the resignation, death or inability to act of Francis R. Hart or James H. Perkins or any successor of either of them, the committee acting under said bondholders' agreement dated September 26, 1921, may appoint a successor; and any person so appointed shall have all the powers conferred hereby upon a member of the reorganization committee to the same extent and in all respects as if he were herein named as a member of the reorganization committee. All the powers conferred by the plan or this agreement upon the reorganization committee shall be exercised by the persons who for the time being constitute the reorganization committee. The reorganization committee may, from time to time, add to its number by electing an additional member or members and the member or members so elected and any successor to any such member (who shall be appointed by a majority of the remaining members of the reorganization committee) shall have all the powers of and, together with those herein named or their respective successors, shall constitute the reorganization committee under the plan and this agreement with like force and effect as if he or they were specifically herein named as parties of the first part.

Third. Holders of the bonds and of certificates of deposit representing any of the bonds may assent to and be- [fol. 184] come parties to the plan and this agreement in the manner provided in the plan, or in any other manner which may be prescribed or approved from time to time by the reorganization committee.

The bonds and appurtenant coupons represented by certificates of deposit issued respectively under said deposit agreement dated December 7, 1921, and said bondholders' agreement dated September 26, 1921, the holders of which shall not have withdrawn as in said agreements respectively provided, and the bonds and appurtenant coupons hereafter deposited as provided in the plan and this agreement, shall be or continue to be held by the respective depositaries under said agreements but shall be subject, nevertheless, to all of the terms and provisions of the plan and this agreement. The reorganization committee at any time in

its discretion may take title to any or all of the bonds so held and any other securities or property held by the respective committees acting under said agreement, respectively, by filing with the committee holding the bonds, securities or other property title to which is to be taken and with the depositary with which such bonds, securities or other property shall be deposited a copy of a resolution of the reorganization committee certified by its secretary stating that the reorganization committee has determined to take title to the bonds, securities and other property specified in such resolution, and immediately upon such filing the reorganization committee shall be vested with the legal title to and all the rights and powers and authority of an absolute owner of all such bonds, coupons, securities, and other property.

The depositaries may upon the request of the reorganization committee appoint agents or other depositaries to accept deposits of the bonds in their behalf, and under their direction to assist in the performance of any other duties imposed upon them as depositaries either by this agreement or by the reorganization committee.

Fourth. All holders of the bonds and of certificates of deposit representing any of the bonds, who shall become parties to the plan and this agreement, their successors and assigns, shall be entitled only to the rights specified in the plan and this agreement or granted by the reorganization committee pursuant to the powers conferred upon it, and shall be subject to such conditions and terms as may be imposed thereunder, and certificates of deposit representing their bonds shall be transferable only subject to the plan and this agreement.

The reorganization committee in its discretion may fix or limit the periods within which deposits may be made under the plan and within which any holder of any of the bonds may assent to and become a party to the plan and this agreement, and may exercise any right given by the plan or this agreement, and the reorganization committee, either generally or in special instances, and upon such terms and conditions as it may see fit, may extend any period or periods so fixed. Holders of the bonds not assenting to and becoming parties to the plan and this agreement within the period or periods respectively so fixed or limited shall

not be entitled so to assent to the plan and become parties to this agreement or to share in any benefits of the plan [fol. 185] and this agreement and shall acquire no rights thereunder except upon obtaining the express written consent of the reorganization committee, which may withhold or give such consent in its discretion and upon such terms and conditions as it may determine, and assenting bondholders who shall fail to exercise any right or option given by the plan or this agreement within the period or periods so fixed or limited for the exercise thereof, shall forfeit such right or option, unless expressly excused by the reorganization committee in writing, which may refuse or grant such excuse in its discretion and upon such terms and conditions as it may determine.

Fifth. The assenting bondholders severally expressly assent to the plan and this agreement and request the reorganization committee to endeavor to carry out the plan and this agreement in their entirety or to such an extent or in such manner and with such conditions, exceptions, substitutions, and modifications thereof as the reorganization committee shall deem for the best interests of the parties hereto or likely to accomplish in substance the results contemplated by the plan and this agreement. Each assenting bondholder hereby grants to and vests in the reorganization committee full power and authority to do any and all acts and things which the reorganization committee may deem necessary or appropriate for the purpose of carrying out the plan and this agreement or otherwise for his best interest; and, without limitation of the effect of the foregoing general authority, hereby grants to the reorganization committee full power and authority, in his name or in the name of the reorganization committee or otherwise as the reorganization committee may determine, to request or direct any trustee under any mortgage securing the bonds or any of them to prosecute foreclosure or take other proceedings for the enforcement thereof, or otherwise, and to exercise any powers and rights conferred by any such mortgage; to confirm and give to any such trustee all such powers as in the judgment of the reorganization committee may be advantageous, and to make all such other requests or directions upon any such trustee or otherwise as the reorganization committee may deem expedient; to execute such papers and do or cause to be done such acts as

the reorganization committee may consider judicious in protecting the rights and interests of the assenting bondholders; to call or waive notice of and to attend any and all meetings of bondholders, stockholders or creditors, however, whenever, and for whatever purpose convened, and thereat, or otherwise, to vote and consent in writing or otherwise to take such action as the reorganization committee may deem expedient; to do whatever may be deemed by the reorganization committee advisable to permit or procure the sale as an entirety, or the separate sales, of the properties and business of the Old Company and/or of the receiver thereof, or such part or parts thereof as the reorganization committee in its discretion may determine, to such corporation organized or to be organized under the laws of such State or States as the reorganization committee may determine (such corporation being in the [fol. 186] plan and this agreement sometimes called the New Company) and for such consideration, whether in stocks or securities or otherwise, as the reorganization committee may determine; to qualify, or to cause a nominee or nominees to qualify, to bid at such sale or sales, and for that purpose to use or authorize the use of any of the bonds and/or any cash or other property and to permit any of the bonds, cash and/or other property so used to be forfeited in case the reorganization committee shall for any reason be unable or deem it inadvisable to complete the purchase of said properties; to acquire and/or to dispose of, on such terms as it may see fit any lines of railroad or other property of any kind or nature whatsoever in the judgment of the reorganization committee advantageous to the New Company or for any of the purposes of the plan and this agreement; to enter into and from time to time change or modify any agreement or agreements with the Railroad Company, the New Company, or any other corporation, or approve and adopt any agreement or agreements with the Railroad Company, the New Company or any other corporations; to cause the New Company to enter into such agreement or agreements with the Railroad Company as the reorganization committee shall in its discretion deem advisable, and the terms and provisions of any such agreement or agreements, including, without limitation of the generality of the foregoing, the terms and provisions of the agreement between the Railroad Company and the New

Company and any other party or parties in respect of the guaranty by the Railroad Company of the dividends on the preferred stock of the New Company and the redemption thereof, shall be such as may be approved by the reorganization committee; to take, join in or consent to such proceedings before the Interstate Commerce Commission and any other public service commission or other public authority as the reorganization committee may deem expedient; to cause the New Company or any corporation used to carry out the plan to create and issue the stocks contemplated by the plan, and to exercise or cause to be exercised all the corporate powers of such corporation until the securities to be issued by such corporation under the plan have been delivered to the persons entitled thereto under the plan; to transfer the bonds or any part of the bonds and/or any other property or rights to such other corporation in exchange in whole or in part for its stock, and/or to use said bonds in whole or in part payment of the purchase price of said properties or for any other purpose in connection with the plan and this agreement; to declare due the principal of the bonds or any of them and to revoke any such declarations; to institute or become parties to or exercise any control over or consent to any proceedings, legal or otherwise, whether by or against the Old Company or any other corporation or persons, or involving any property of the Old Company or its receiver, and to prosecute, defend, compromise or settle the same and to consent to or enter into any and all arrangements tending toward or deemed by the reorganization committee in its discretion likely to facilitate the consummation of the plan and this agreement; [fol. 187] to receive and dispose of in accordance with the plan and this agreement the stocks issued for the purpose of carrying out the plan and to cause the stock certificates representing the preferred stock of the New Company to be indorsed, as provided in the plan, in respect of the guaranty by the Railroad Company of the dividends on the preferred stock and the redemption thereof; and to have all voting powers upon all such stocks for any purpose in the judgment of the reorganization committee necessary or advisable until delivered to the persons entitled thereto under the plan or to whoever shall be entitled to receive the same.

Nothing in the plan or this agreement shall obligate the reorganization committee to bid for or to acquire said properties for the New Company, or to cause said properties to be acquired by the New Company, except at a price or prices which shall seem advisable to the reorganization committee in its discretion, and in the event that said properties shall not be acquired by the New Company but shall be otherwise disposed of, the reorganization committee is authorized to collect in respect of the bonds subject to the plan and this agreement any and all amounts payable thereon out of the proceeds of the sale or sales of said properties and, after deducting the expenses and compensation of the committees, the reorganization committee and the depositaries and their respective counsel, agents and employees, and any other expenses and compensation approved by the reorganization committee, to distribute the balance of said proceeds of sale or sales pro rata to assenting bondholders.

The reorganization committee is by the plan and this agreement substituted for the committees in respect of all or any action to be taken by, and all or any rights of, the committees under said agreement between the Railroad Company and the committees and also under the respective agreements under which the committees are acting; but the committees will take any and all action requested by the reorganization committee.

In the event that for any reason the Railroad Company shall not perform its obligations under said agreement between the Railroad Company and the committees, or in the event that the Interstate Commerce Commission or other public authorities having jurisdiction, if any, shall fail to approve the carrying out of the plan and this agreement, the reorganization committee is nevertheless authorized in its sole discretion to bid for and to purchase said properties at any sale or sales thereof, and the amount of any such bid or bids whether or not made pursuant to said agreement between the Railroad Company and the committees, shall be such as may be approved by the reorganization committee in its sole discretion.

The reorganization committee is authorized by the assenting bondholders to sign and execute any proofs of claim or other instruments necessary to prove the claims of the hold-

ers of the bonds in any proceedings, and to vote on such claims at any meeting for any other purpose, with full power of substitution. The reorganization committee is [fol. 188] likewise authorized to consent to the vacating of any order appointing a receiver of the Old Company or any of its property and to consent to the discharge of any such receiver, or to the vacating of any other order or proceeding. All the powers and authority of the reorganization committee shall remain unmodified and undiminished by or during or after any sale or sales, and any receivership or any other legal or equitable proceedings relating to or involving the Old Company or all or any of its property.

The reorganization committee is authorized by the assenting bondholders to make such provision, if any, as in its sole discretion it may deem equitable, for lost, stolen or mutilated bonds or coupons and may provide for the issue of fractional scrip representing fractional interests in the new securities.

The reorganization committee is authorized by the assenting bondholders to determine, without limitation or restriction, the manner in which the purposes of the plan and this agreement shall be carried out. The purposes of the plan and this agreement may be deemed, at the election of the reorganization committee, to have been accomplished if the reorganization committee shall be in a position to make distribution of the stocks contemplated by the plan issued by the New Company which shall own substantially said properties of the Old Company, whether or not all the obligations which may be assumed by the New Company shall have been fully discharged.

The sum of $100,000 received on or about September 20, 1920, by the trustee under the mortgage securing the income bonds, together with any interest thereon, whenever the plan shall be consummated, after deducting therefrom all expenses and charges of the committee formed under said deposit agreement in respect of the income bonds not otherwise provided for, shall be distributed when and as determined by said committee in its discretion to the holders of the income bonds, whether or not such holders shall have assented to the plan and this agreement, and neither the new company nor the Railroad Company nor the holders of first mortgage bonds shall be entitled to receive any part of said sum.

Sixth. Each assenting bondholder, for himself and for each and every of his successors in interest in respect of any and all bonds held by him or represented by his certificate of deposit, agrees at any time and from time to time on demand of the reorganization committee to execute all such further transfers and assignments and all other instruments as may be required for further evidence of the vesting in the reorganization committee or its nominees, ownership of, and all powers of ownership (including any power to vote and consent) in respect thereof, and agrees to deposit all such transfers and assignments and other instruments with any of the depositaries in the manner and at the time the reorganization committee may designate. The reorganization committee may in its discretion sell, assign, release, or otherwise use or dispose of any and all of the bonds represented by it, in any manner deemed by it appro- [fol. 189] priate to carry out or to endeavor to carry out the purposes of the plan and this agreement.

In case any assenting bondholder shall at any time fail to execute any instrument or make any delivery or deposit on demand of the reorganization committee within such period of time as the reorganization committee may prescribe, he shall, at the election of the reorganization committee, forfeit all rights and cease to be entitled to any benefits under the plan and this agreement.

Seventh. The reorganization committee may construe the plan and this agreement and said agreement between the Railroad Company and the committees, and its construction thereof or action thereunder in good faith shall be final and conclusive. It may supply any defect or omission and reconcile any inconsistency in such manner and to such extent as shall be deemed by it necessary to carry out the plan and this agreement properly and effectively, and it shall be the sole and final judge of such necessity. The reorganization committee shall be the sole and final judge as to when and whether the assent of the holders of a sufficient principal amount of the bonds shall have been obtained to warrant the reorganization committee in declaring the plan operative, and shall have the power to declare the plan operative at such time; and it shall have power whenever it shall deem proper, at any time before the new securities shall have been issued and delivered

pursuant to the plan, and whether or not the plan shall have been declared operative, to alter, modify, depart from, or abandon the plan or any part thereof. It may at any time or times, after any such partial abandonment, restore to the plan any abandoned part or parts thereof, and may seek to carry the same into effect as if such part or parts had not been abandoned. It may also attempt to carry the plan into effect rather than to abandon the same or may submit a modified plan as hereinafter provided, even though it be clear that, as carried out, the plan must depart from the original plan or from some part thereof. Any change or modification made by the reorganization committee shall thereupon become part of the plan and this agreement; and all provisions concerning the present plan shall apply to the plan as so changed and modified and the term "Plan" wherever used in the plan or this agreement includes any changed or modified plan adopted as herein provided. In case of any change or modification of the plan or of said agreement between the Railroad Company and the committees materially adversely affecting assenting bondholders, the reorganization committee shall file a statement of such proposed change or modification with the depositaries and give notice, as hereinafter provided in article thirteenth, of the fact of such filing, and thereafter at any time within two weeks after final publication of such notice any assenting bondholder may withdraw his assent and his bonds, or the proceeds thereof or substitutes therefor theretofore transferred or assigned to and then under the control of the reorganization committee, upon surrender in transferable form of his certificate of deposit to the depositary issuing the same, and at the election of the reorganization committee, upon the [fol. 190] payment of such amount as the reorganization committee shall in its discretion fix as a fair contribution towards the obligations, compensation, and expenses of the reorganization committee and of the committees. Every assenting bondholder who shall not within two weeks after final publication or the giving of said notice surrender, withdraw, and make payment as aforesaid, shall be deemed to have assented to the proposed change or modification, and whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually as-

sented thereto. The reorganization committee shall have the sole and exclusive right to determine whether any change or modification of the plan or of said agreement between the Railroad Company and the committees materially adversely affects assenting bondholders, and the determination of the reorganization committee shall be final and conclusive on all parties hereto. In case the reorganization committee shall finally abandon the entire plan, whether or not the plan shall have been declared operative, as it may do in its uncontrolled discretion, the reorganization committee shall deliver to each of the committees securities of the character and in the amount represented by all of the certificates of deposit then outstanding under said agreements constituting such committees, respectively, or the proceeds of or substitutes for such securities then under the control of the reorganization committee, and the proportionate part as determined by the reorganization committee of any other securities or property acquired by the reorganization committee and not previously or simultaneously sold, contracted to be sold, or otherwise disposed of, or, as the reorganization committee in its discretion may determine, certificates of interest representing their pro rata share, as fixed by the reorganization committee in its sole discretion, of any such securities or property, and in the ultimate proceeds of any liquidation or other dealing therewith, upon the payment by such committee to the reorganization committee of any taxes upon such transfer and delivery and such sum as the reorganization committee in sole discretion shall fix as a fair contribution toward the obligations, compensation and expenses of the reorganization committee; and thereafter the rights of the holders of such certificates of deposit shall be only such as are conferred by said agreements respectively under which such certificates of deposit may be issued, unaffected by the plan and this agreement or any action taken pursuant hereto.

No party hereto shall be entitled to withdraw from the plan and this agreement or to receive bonds transferred or assigned to the reorganization committee, except as provided in this article, and then only within the time and subject to the conditions and limitations in this article provided.

Eighth. The reorganization committee may proceed under the plan and this agreement or any part thereof in such manner as it shall deem advisable. Anything which anywhere in the plan or this agreement the reorganization committee is authorized to do or allow to be done it may do or allow to be done by or through such agents or agen- [fol. 191] cies as it may determine, or by or through others, with its approval, consent, or acquiescence, or by contracting therefor with any person, firm, or corporation. Any action contemplated in the plan or this agreement to be performed on or after the completion of the reorganization may be taken by the reorganization committee at any time when it shall deem the plan sufficiently advanced to justify such course, whether before or after any sale or before or after the plan has been declared operative, and the reorganization committee, as it may deem necessary, may defer the performance of any provisions of the plan and this agreement and may commit such performance to the New Company. It may also in its uncontrolled discretion set apart and hold in trust, or place in trust all or any part of the securities to be issued, and any cash received from sales of new securities or otherwise, as it may deem judicious for the purpose of securing the application thereof for any of the purposes of the plan and this agreement or for the uses of the New Company, and in its discretion, may issue to the assenting bondholders certificates of interest in lieu of the new securities which would otherwise be issued. The reorganization committee may also, in its discretion, purchase obligations or claims against, or other securities of, the Old Company and hold the same subject to the plan and this agreement, or it may pay, compromise, or discharge any such obligation, claim, or securities and may provide for the purchase price thereof or funds therefor by the sale of the bonds or other securities of or claims against the Old Company or stock in or other securities of or other obligations of the New Company or in any other manner approved by the reorganization committee.

Ninth. The reorganization committee shall have the sole control, direction, and management of the plan, including any new or modified plan of reorganization. The reorganization committee undertakes to endeavor to execute the

plan, but neither the reorganization committee nor any member thereof nor the depositaries nor the committees nor any member of either of the committees assume any individual responsibility either for the execution of the plan or of this agreement or of said agreement between the railroad company and the committees, or any part thereof or for the result of any steps taken or acts done for the purpose thereof. Neither the depositaries nor the reorganization committee nor the committees nor any member of either of the committees assume any responsibility or liability as to the genuineness, validity, or regularity of any of the bonds deposited hereunder or subject hereto. Neither the depositaries nor the reorganization committee nor any member thereof nor the committees nor any member of either of the committees shall be liable for any action taken in good faith in the belief that any of such bonds or any other documents or signatures are genuine. Nor shall the reorganization committee or any member thereof nor the depositaries nor the committees nor any member of either of the committees be individually liable for any act or omission of any agent or employee selected in good faith, nor [fol. 192] for any error of judgment or mistake in fact or law, nor in any case except for his or its own individual wilful malfeasance or wilful neglect; nor shall the reorganization committee or any member thereof nor the depositaries nor the committees nor any member of either of the committees be liable for the acts or defaults of each other. The reorganization committee shall not be liable for any depreciation in the value of any bonds or other securities of property transferred to or acquired by it. It is the purpose and intent of this agreement that any loss or liability whatsoever of the depositaries or of the reorganization committee and the members thereof and of the committees and the members of each of the committees caused otherwise than by wilful malfeasance or bad faith shall be conclusively deemed to be part of the expenses of the reorganization or of the reorganization committee as hereinafter provided for.

Nor shall the reorganization committee or any member thereof nor the committees nor any member of either of the committees be in any way responsible or liable in respect of of the performance by the Railroad Company of any obligation or obligations to be performed by it under said agree-

ment between the Railroad Company and the committees, nor for any action taken by the reorganization committee and/or the committees pursuant to the provisions of said last-mentioned agreement, provided only that the same shall be taken in the endeavor in good faith to preserve or enforce the rights and/or carry out the obligations of the committees and/or the reorganization committee under said last-mentioned agreement.

The depositaries shall incur no liability for anything done or permitted to be done at the request and direction of the reorganization committee or of any officer thereof; the deposited bonds being intended and agreed to be held at the order and under the control of the reorganization committee. The depositaries shall be bound only to exercise reasonable care in the safe-keeping of the deposited bonds and other securities and property which may be deposited with or held by them hereunder and to deal therewith in accordance with the directions of the reorganization committee. The direction of the reorganization committee shall be a complete justification for any action or omission to act on the part of the depositaries. Any depositary may resign upon ten days' notice in writing to the reorganization committee and the reorganization committee shall have power to remove any depositary and from time to time to fill any vacancy however arising in the office of any depositary. In the event of such resignation or removal the depositaries shall, upon receiving due and proper receipt and acquittance, deliver all cash, securities, property, and records held by it to the new depositary.

The reorganization committee may employ counsel, agents, depositaries, and all proper assistants, and may incur and discharge or assume any and all expenses by it deemed reasonable for the purposes of the plan and this agreement.

[fol. 193] The reorganization committee may from time to time borrow or otherwise obtain money for any of the purposes of the plan upon such terms and conditions as it may deem proper and may execute any promissory notes and other instruments, and for the performance of such notes and other instruments and any contract at any time made by the reorganization committee or by the committees or either of them or the repayment of any moneys so borrowed with interest or the performance of any other obligation in-

curred hereunder, the reorganization committee may charge or pledge the bonds represented by it, or the new securities, or any other property at any time purchased or otherwise acquired hereunder, but not member of the reorganization committee or of either of the committees shall have any personal or individual liability in respect of any such contract, moneys so borrowed, or obligations.

All compensation and expenses in connection with the plan shall be determined and apportioned by the reorganization committee. The reorganization committee, for any disbursements or expenditures made or liability incurred by or in respect of the reorganization or the carrying out of the plan or the attempt to carry out the plan, and for its compensation and the compensation of such persons, firms, or corporations as it maw see fit to employ, shall have a lien upon all bonds, securities, claims, obligations, or stocks transferred and assigned or to be transferred and assigned to it, and upon all property and securities acquired in the course of the reorganization, and, until their delivery or distribution, upon the new securities contemplated by the plan. So far as deemed by the reorganization committee practicable the compensation of and any expenses authorized or incurred by it hereunder, including any taxes on the issue and transfer of new stocks and other securities, may be paid as part of the reorganization expenses by the New Company or by the Railroad Company or otherwise, and the reorganization committee may make provisions satisfactory to itself therefor, but except as so paid, it may charge the assenting bondholders for its compensation and expenses and may deduct such charge from any amounts or securities becoming payable to or transferable to the assenting bondholders and for payment thereof shall have a lien upon the bonds and upon any and all moneys and new securities issued in lieu or in payment thereof. The reorganization committee may utilize or cause to be utilized all or any part of the payment of $600,000, or any lesser amount, to be made to the committees or the reorganization committee under said agreement between the Railroad Company and the committees, in such manner and for such purposes as the reorganization committee may deem proper, and without limiting the generality of the foregoing, to pay and discharge the compensation and disbursements of the trustees under the respective mortgages securing the bonds and

their respective counsel, and to pay and discharge the claims for compensation and allowance of the receiver and counsel for the receiver and any and all costs and allowances [fol. 194] which may be imposed or become payable in respect of said receivership, and the compensation and allowances of counsel, masters and agents, and also compensation and expenses of the depositaries under said deposit agreement and under said bondholders' agreement and to compensate the members of the committees and members of the reorganization committee and the respective counsel of the committees and the reorganization committee, and the amount of any and all such payments, allowances, and compensation shall be such as may be approved by the reorganization committee, including the compensation of members of the reorganization committee as such and as members of either of the committees.

The reorganiaztion committee upon making or providing for the payment or deliveries to the assenting bondholders in accordance with the plan and this agreement shall be under no further liability or responsibility of any character and thereupon the reorganization committee shall be discharged. The acceptance of new stock or securities shall prevent the acceptor thereof from questioning the conformity of such stock or security in any particular to any of the provisions of the plan, and the acceptance of new stock or securities by seventy-five per cent in amount of the assenting bondholders shall bind all assenting bondholders and constitute full ratification of all acts and proceedings of the reorganization committee, the committees, and the depositaries.

Any member of the reorganization committee and any member of either of the committees and any firm or corporation of which he may be a member, director, or officer and the depositaries, or any of them, or their respective directors, officers, or agents, may become assenting bondholders hereunder, and shall be entitled to the same benefits as any other assenting bondholder. They or any of them, without accountability in respect thereof, may purchase or be or become pecuniarily interested in, or in the purchase of, any bonds, debentures, stocks, contracts, or matters which the plan or this agreement concerns or to which it relates, and may contract with, deal with, advance or loan moneys to the reorganization committee, to the respective

committees and/or to the New Company, for the purposes of the plan or in connection with the carrying out of the plan or otherwise. They may become officers, directors, or stockholders of the New Company or of any corporation or corporations in any way affected by the plan and this agreement.

Tenth. The enumeration of specific powers hereby conferred shall not be construed to limit or restrict general powers herein conferred or intended so to be. It is hereby distinctly declared that it is intended to confer on the reorganization committee in respect of all bonds of assenting bondholders, whether or not transferred or assigned to the reorganization committee, and in all other respects, any and all powers which the reorganization committee may deem necessary or expedient in or towards carrying out or [fol. 195] promoting the purposes of the plan and this agreement in any respect as now existing or as the same may be modified or amended, even though any such power be apparently of a character not now contemplated. And the reorganization committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason it may deem expedient. All powers and authority by the plan or this agreement conferred upon the reorganization committee are hereby declared to be irrevocable and coupled with an interest.

The invalidity of one or more phrases, sentences, clauses, or paragraphs contained in this agreement or in the plan or in said agreement between the Railroad Company and the committees shall not affect the remaining portion of this agreement or of the plan or of said agreement or any part thereof, all of the phrases, sentences, clauses, or paragraphs of this agreement and of the plan and of said agreement being inserted conditionally on their being held valid and lawful, and in the event that any one or more of the phrases, sentences, clauses, or paragraphs contained in this agreement or the plan or in the said agreement between the Railroad Company and the committees should be invalid, this agreement and the plan and said agreement between the Railroad Company and the committees shall be construed as if such invalid phrases, sentences, clauses, or paragraphs had not been inserted.

Eleventh. The reorganization committee may in its absolute discretion decline to receive and accept the deposit of any particular bonds or the assent of any particular bondholder. Likewise the reorganization committee may in its absolute discretion at any time decline further to represent any particular bonds which it has theretofore represented while continuing to represent the remaining bonds, in which event the reorganization committee shall publish in the manner prescibed in article thirteenth hereof a notice specifying the bonds which the reorganization committee declines further to represent and giving the holders thereof an opportunity of withdrawing them on the terms named in article seven hereof, and at the expiration of fifteen (15) days from the first publication of such notice, such holders shall cease to be parties to the plan and this agreement and the reorganization committee shall cease to be under any responsibility to represent the bonds so specified in such notice.

Twelfth. Any bonds deposited hereunder or subjected hereto and any bonds acquired under the plan and this agreement shall remain in full force and effect for all purposes, and shall not, unless the reorganization committee shall otherwise direct, be deemed merged, satisfied, released, or discharged by any delivery of new securities. Any purchase or purchases by or on behalf of the reorganization committee shall vest the property purchased in the reorganization committee free from all interest or claims on the part of any bondholders or other parties.

This agreement shall be construed strictly as among the parties only and as solely affecting and relating to them, and no other person, firm, or corporation shall have any right hereunder. The plan and this agreement shall bind and benefit the several parties and their and each of their surviving heirs, executors, administrators, successors, and [fol. 196] assigns.

Thirteenth. All calls or notices required to be given hereunder shall be inserted for publication in one daily newspaper of general circulation in the city of New York and in one daily newspaper of general circulation in the city of Boston, once in each week for two successive weeks beginning on any day of the week. Any call or notice whatsoever when so published by the reorganization committee

shall be taken and considered as though personally served upon all parties hereto, as of the day of the final insertion thereof, and such publication shall be the only notice required to be given under any provision of the plan and this agreement. When a call or notice shall have been advertised as above specified, publication shall be complete as regards all parties hereto and no further publication or notice shall be required.

Fourteenth. The period of five years from the date hereof is specified as the period within which the assenting bondholders shall be entitled to the return of the bonds which they have deposited hereunder or the receipt of new securities on reorganization.

Within six months after the termination of this agreement the reorganization committee may file a statement of its transactions and accounts with the depositaries. It shall thereupon give notice of the filing thereof by publication once a week for two successive calendar weeks in one daily newspaper of general circulation in the Borough of Manhattan, city of New York, and in one daily newspaper of general circulation in the city of Boston. Unless legal proceedings impeaching the correctness of such accounts or calling in question such transactions shall be duly commenced within sixty days after the first publication of such notice, said accounts and statements as against all parties interested therein shall be conclusively presumed to be in all respects correct, and the reorganization committee and the committees and the depositaries shall be released and discharged from all liability and accountability of any kind and description arising out of the plan and agreement or any modified or substituted plan, or any action taken by the reorganization committee, excepting only such liabilities to holders of outstanding certificates of deposit or otherwise as are expressly admitted in said statements.

This agreement may be executed in any number of counterparts which shall constitute but one and the same instrument.

In witness whereof this agreement or a counterpart thereof has been signed by the members of the reorganization committee and of the committees herein referred to, or by a majority of each thereof, as of the day and year first [fols. 197-314] above written, and the assenting bond-

holders have become parties hereto in the manner herein provided.

George E. Warren, Francis R. Hart, George E. Roosevelt, and James H. Perkins, as the reorganization committee constituted by the foregoing plan and agreement, and not individually, by G. E. Warren, Francis R. Hart, James H. Perkins, George E. Roosevelt, a majority of said committee.

George E. Warren, Joseph P. Bradshaw, Edwin P. Maynard, C. F. Ayer and George E. Roosevelt, as the committee acting under said deposit agreement dated December 7, 1921, and not individually, by G. E. Warren, Joseph P. Bradshaw, E. P. Maynard, C. F. Ayer, George E. Roosevelt, a majority of said committee.

Francis R. Hart, James H. Perkins, Percy R. Pyne, 2nd, George Bramwell Baker, and F. J. Lisman, as the committee acting under said bondholders' agreement dated September 26, 1921, and not individually, by Francis R. Hart, James H. Perkins, Percy R. Pyne, 2nd (by J. H. Perkins, atty.), F. J. Lisman, a majority of said committee.

[fol. 315] BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket No. 5454

In the Matter of the Application on Behalf of ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY for a certificate of public convenience and necessity, pursuant to subdivision (18) of section 1, and for authority to issue stocks pursuant to subdivision (2) of section 20a, of the interstate commerce act and other applicable provisions thereof.

To the Honorable Interstate Commerce Commission:

Atlanta, Birmingham and Coast Railroad Company (hereinafter called the applicant) hereby concurs and joins in and adopts as its own the application dated April 8, 1926, to your commission made by the reorganization committee therein described on behalf of the applicant, and respectfully states as follows:

First. The exact corporate name of the applicant is Atlanta, Birmingham and Coast Railroad Company.

Second. The names, titles, and postoffice addresses of the applicant's president, secretary, principal attorneys and executive officer by whom this application is signed, verified and filed are as follows:

Title	Name	Post-office address
President,	A. V. B. Gilbert,	56 Marietta Street, Atlanta, Georgia.
Secretary,	J. A. Fowler, Jr.,	43 Exchange Place, New York, N. Y.
Principal attorneys,	Cotton & Franklin,	43 Exchange Place, New York, N. Y.
Executive officer by whom application is signed, verified, and filed,	J. A. Fowler, Jr.,	vice president, 43 Exchange Place, New York, N. Y.

[fol. 316] Third. The applicant is organized and received its present charter under the laws of the State of Georgia.

Fourth. The applicant does not now operate in any State. The applicant proposes to operate in the States of Georgia and Alabama. The applicant has qualified to do business in the State of Alabama.

Fifth. The applicant files with this application copies of the following papers duly authenticated in accordance with the requirements of the Interstate Commerce Commission:

Exhibit A. Petition for incorporation;

Exhibit B. Certificate of secretary of state (Exhibits A and B constitute the charter of the applicant), with resolution of acceptance of charter;

Exhibit C. By-laws of the applicant (there has been no amendment of the charter or by-laws);

Exhibit D. Copies of all resolutions of directors authorizing the issues in respect of which said application dated April 8, 1926, and this application are made, and copies of all resolutions of stockholders relating to the same;

Exhibit E. Copies of resolutions of the directors designating by name the executive officer by whom this application is signed and filed;

Exhibit F. Opinion of counsel; and

Exhibit G. Proofs of all securities in respect of which the application is made (specimens not being available).

Sixth. Attention is called to the provision on page 3 of the plan of reorganization that the dividends on the preferred stock are to accrue "from one year after the date on which possession of said properties shall be vested in the New Company [the applicant]." The petition for incorporation (filed herewith as Exhibit A) had to be filed at a time when it was not possible to determine that date, and January 1, 1928, was inserted therein as the date from which such dividends are to accrue. However, it was not intended that the above-quoted provision of the plan be altered, and provision is to be made by agreement or otherwise so that the dividends on the preferred stock will accrue as stated in the plan.

Wherefore, the applicant requests that your commission authorize the issue by the applicant in temporary or definitive form, and if in temporary form the issue of securities of like character in definitive form in exchange therefor, of the $5,180,344.07 par value of its preferred stock and the 150,000 shares without par value of its common stock, as described in said application dated April 8, 1926.

Dated, November 25, 1926.

Respectfully submitted. Atlanta Birmingham and Coast Railroad Company, by J. A. Fowler, Jr., Vice President.

STATE OF GEORGIA,
County of Fulton, ss:

J. A. Fowler, Jr., being duly sworn, deposes and says that he is an executive officer—to wit, vice president—of [fols. 317-374] Atlanta, Birmingham and Coast Railroad Company, the corporation described in and who executed the foregoing application; that he has read the foregoing application and has knowledge of the facts therein set forth; and that the same are true as therein stated; and that he has been duly authorized by said corporation to sign, verify, and file the foregoing application.

J. A. Fowler, Jr.

Subscribed and sworn to before me this 25 day of November, 1926.

A. V. B. Gilbert, Notary Public, State of Georgia at Large. (Notarial Seal.)

My commission expires March 12, 1929.

[fol. 375] SUPPLEMENTAL APPLICATION OF ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY FOR CONSTRUCTION BY THE COMMISSION OF AN ORDER ENTERED BY THE COMMISSION IN FINANCE DOCKET 5454, DECEMBER 21, 1926

To the Honorable Interstate Commerce Commission, Washington, D. C.:

The Atlanta, Birmingham and Coast Railroad Company, petitioner herein (hereinafter sometimes called the New Company), is a corporation organized under the laws of the State of Georgia as successor, after foreclosure, of Atlanta, Birmingham and Atlantic Ry. Co. (hereinafter sometimes called the Old Company) and under its charter and pursuant to the said laws of the State of Georgia owns all of the properties, rights, powers, privileges, and franchises heretofore owned and/or enjoyed by said Atlanta, Birmingham and Atlantic Ry. Co.

Petitioner respectfully prays that this commission, or Division 4 thereof, will consider that portion of the order [fol. 376] entered by Division 4 on December 21, 1926, in Finance Docket 5454, "Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co.," reading as follows:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of *the amount received therefor.*" (Italics ours.)

and will enter its further order, construing said condition and authorizing this petitioner to set up on its accounts as

the cost of road purchased the amount actually received by said Atlanta, Birmingham and Coast Railroad Company in exchange for its preferred and common capital stock, as in said condition set forth. And in support of said prayer, this petitioner sets forth the following facts, which appear in the record in said Finance Docket 5454, and in Finance Docket 5470, application of Atlantic Coast Line Railroad Company, which was contemporaneously considered by this commission.

1. Prior to February, 1926, the Atlanta, Birmingham & Atlantic Ry. Co. was in the hands of a receiver. The property was hopelessly insolvent. A committee representing the majority of the bondholders approached the Atlantic Coast Line in an effort to arrange a sale of the properties and franchises of said railroad. On February 23, 1926, an agreement was reached between the said bondholders' committee and Atlantic Coast Line Railroad Company. The Atlantic Coast Line Railroad Company declined to purchase the property and franchises of the Atlanta, Birmingham & Atlantic Ry. Co., but agreed with the bondholders that if they would purchase said property and franchises at foreclosure sale and would thereafter organize a new company and convey said properties to such new company it, the said Atlantic Coast Line Railroad Company, would purchase from said bondholders the entire voting common capital stock for the consideration named in said agreement; to wit, cash sufficient to pay the obligations of the old company prior to the mortgages securing the bonds, equipment obligations, and obligations of the receiver, substantially as set forth in Exhibit A of said agreement, and would guarantee the preferred stock of said new company, as in said agreement set forth.

2. Application was thereafter filed by the said bondholders with this commission and was given Finance Docket 5454, above mentioned. Like application was filed by Atlantic Coast Line Railroad Company, asking authority to acquire said capital stock and to assume the obligations provided in said contract, and was given Finance Docket [fol. 377] 5470. The two said applications were heard and considered together.

3. On October 26, 1926, this commission entered its first report and order in said two applications. Said report

showed that, pursuant to the agreement aforesaid, the bondholders had appointed a committee which had bid in the property of the Atlanta, Birmingham & Atlantic Ry. Co. at foreclosure sale, said bid being conditioned upon substantial approval of the plan by this commission. In this report it was stated—

"There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line is in the public interest. * * * Approval should therefore be given and the necessary authority issued, unless there be something in the terms and conditions of the proposed acquisition, or in the consideration, so inequitable as to require modification in the public interest. We find nothing of this character in the arrangement."

In the report the following statement also appears—

"The statement of the investment accounts of the New Company has not received consideration by the applicants, but they indicate their willingness to subscribe to such reasonable restriction as we may prescribe."

At the end of the said report of October 26, 1926, the following appears—

"The New Company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the New Company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the New Company accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order."

Pursuant to said report, the bondholders committee that had purchased the properties of the Old Company, as aforesaid, applied to the State of Georgia for a charter, as suc-

cessors at foreclosure sale of Atlanta, Birmingham & Atlantic Railway Company. Said charter was issued. By section "eighth" thereof it is provided—

"The company may issue and dispose of all or any of the said fifty-two thousand shares of preferred stock and all or any of said one hundred fifty thousand shares of common stock for such cash, property, real or personal, or other consideration and upon such terms or conditions as may be determined from time to time by the board of directors * * * and, without limiting the generality of the foregoing, authority is hereby conferred for the issue [fol. 378] of all or any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock *for the purpose of acquiring and paying for the property and assets described* in article first hereof and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926." (Italics ours.)

These facts and a copy of said charter were filed with this commission in a supplemental application and, thereafter, on December 21, 1926, this commission entered its second order in said Finance Dockets 5454 and 5470, approving the issuance of the stock as in said plan contemplated, and authorizing the Atlantic Coast Line Railroad Company to acquire control of said New Company by the acquisition of all of its common capital voting stock. By said order, it was provided, as hereinbefore set forth, that authorization was granted—

"Upon the express condition, that, for the purposes of the accounting as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of *the amount received therefor.*" (Italics ours.)

3. Thereafter, this petitioner, Atlanta, Birmingham and Coast Railroad Company, secured the services of Haskins & Sells, certified public accountants, of the city of New York, to examine the books and accounts of the Old Com-

pany and to recommend to this petitioner the form and manner of opening the books of account of the Atlanta, Birmingham and Coast Railroad Company pursuant to and upon conditions set forth by the commission in its order aforesaid. Said certified public accountants thereafter submitted a report recommending to this petitioner the form of the accounts to be set up upon its books under the terms of said conditions. A copy of said report, marked "Exhibit A," containing a condensed tentative balance sheet at the commencement of business on January 1, 1927, is hereto attached.

Said Haskins & Sells, in said report, in substance reported to this petitioner that inasmuch as the record showed that the New Company had purchased the property of the Old Company from the bondholders committee (the purchasers at foreclosure sale), and had paid said bondholders committee for said property by issuing to said bondholders committee, or their nominees, all of the preferred and all of the common capital stock authorized by its charter; that said petitioner had received for the common stock aforesaid, the difference between the total value of the property conveyed and the amount of the preferred stock at par. They further recommended that in setting up investment in road and equipment petitioner should use a sum equal to the value of the property so received [fol. 379] by it in exchange for its common stock and preferred stock, the value of the entire property so received be reckoned upon the basis found by this commission in its valuation of said property in Valuation Docket No. 1, Valuation of the Atlanta, Birmingham & Atlantic Ry. Company.

Thereafter, and pursuant to said report, this petitioner submitted to the bureau of accounts of this commission a tentative balance sheet in the form recommended by Haskins & Sells, as aforesaid, and were advised later, by Mr. Wylie, chief of said bureau, by letter dated August 3, 1927, that said balance sheet was disapproved and, in lieu thereof, directing this petitioner to set up in its accounts as the value of its investment in road and equipment, the par value of the preferred stock issued, plus the amount paid by the Atlantic Coast Line Railroad Company to the bondholders, or upon their order, as purchase price of the common capital stock aforesaid, none of which said money was paid to

or ever reached or was "received" by said Atlanta, Birmingham and Coast Railroad Company, petitioner herein. A copy of Mr. Wylie's letter is attached hereto, marked "Exhibit B."

This petitioner therefore alleges:

(1) That the director, bureau of accounts, in his ruling aforesaid, has confused the amount paid to and received by Atlanta, Birmingham and Coast Railroad Company for the common stock, with the amount subsequently paid to or upon direction of the bondholders' committee, by the Atlantic Coast Line Railroad Company, as consideration for said common stock, assigned to the Atlantic Coast Line Railroad Company upon the order of said bondholders' committee.

(2) That the charter of Atlanta, Birmingham and Coast Railroad Company, in section "eighth," hereinbefore set forth, authorizes the issuance of the preferred and common stock of said company, specifically "for the purpose of acquiring and paying for the property and assets" of the Atlanta, Birmingham & Atlantic Ry. Co., and that, pursuant thereto, the Atlanta, Birmingham and Coast Railroad Company "received" for said stock the property aforesaid.

(3) That the value of said property, so received by the Atlanta, Birmingham and Coast, has been taken by Haskins & Sells to be the value thereof, as found by this commission, after full consideration, in Valuation Docket No. 1, *Valuation of Atlanta, Birmingham & Atlantic Railway Company.*

(4) That the value of the property thus acquired by this company can not, in truth, be measured by a price subsequently paid by another as a consideration for a part of the stock of this company; that, therefore, the ruling by the director of the bureau of accounts in his letter aforesaid, directing the auditor of the petitioner that "It will be necessary for you to consider the sum of $4,080,699.80 as cash value of 150,000 shares of no par stock" in setting up the [fol. 380] value of the property so acquired by this company, would require of this company a perversion of the facts and would perpetuate upon the books of this company a statement in conflict with said facts, and in conflict with

the true purpose and intent of the order of the commission aforesaid.

(5) That the ruling of the director of the bureau of accounts in requiring this petitioner to set up upon its books as the value of the property acquired by it a sum materially less than the value of said property, as found by this commission, is in direct conflict with the ruling made by said bureau of accounts in the matter of the reorganization of the Georgia & Florida Railroad. This petitioner is advised and believes and therefore asserts that the said bureau of accounts has directed the auditor of the Georgia & Florida Railroad, which has recently been reorganized after foreclosure, that it will approve entries charging account 701 "with the combined tentative final and final valuation of the old properties acquired" by said successor company, as the result of said foreclosure. As basis for this statement petitioner attaches hereto, marked "Exhibit C," a letter purporting to be a copy of a letter dated July 1, 1927, written by Mr. Alexander Wylie, director, addressed to Mr. M. T. Lanigan, auditor, Georgia & Florida Railroad.

This petitioner asserts that it is seeking by this petition to obtain an order authorizing it to set up in its books of account, as the value of the property acquired by it at foreclosure of the Atlanta, Birmingham & Atlantic Ry. Co., entries charging its accounts with the final valuation of the old properties acquired, as fixed by the commission.

Petitioner further asserts that it accepted the authority granted by the commission upon its said application in Finance Docket 5454, subject to the condition imposed by this commission, taking said condition to mean what the language thereof clearly implied; that in accordance with said language it is proposed to set up on its books as the value of the common stock aforesaid issued by it, the value required by said condition, to wit, the value of the property "received therefor"; that it never received the said sum of $4,080,699.80 paid by Atlantic Coast Line Railroad Company to the bondholders committee or their nominees nor any part thereof, and that the ruling of the bureau of accounts directing this petition to set up said sum as the value of the common stock issued instead of the value of the property actually received by this petitioner for said stock is a perversion of the condition set forth in the order

of Division 4 aforesaid, would require a misstatement of fact upon the books of this petitioner and is not in accord with the condition imposed by the commission and accepted by this petitioner in this proceeding.

Petitioner therefore prays that it be granted a hearing by this commission or by Division 4 and afforded opportunity at said hearing to appear by counsel and present its oral argument in support of this petition and that the commission enter further or supplemental order directing and au- [fol. 381] thorizing this petitioner to set up upon its books as the value of the common stock aforesaid, the value of the property received by this petitioner therefor, as fixed by this commission in Valuation Docket No. 1, aforesaid.

This petition is made and filed by George B. Elliott, advisory counsel for the petitioner herein, pursuant to authority conferred by the board of directors of the Atlanta, Birmingham and Coast Railroad Company, petitioner aforesaid, adopted at the meeting held in New York on the 17th day of August, 1927, certified copy of which is hereto attached.

Copies of this petition are, contemporaneously with the filing hereof, being served by petitioner upon all parties or attorneys who appeared at the hearing or oral argument in Finance Docket No. 5454.

Respectfully submitted, Atlanta, Birmingham and Coast Railroad Company, By George B. Elliott, Advisory Counsel.

The vice president called attention of the board to letter from Doctor Wylie, director, bureau of accounts, Interstate Commerce Commission, disapproving recommendation of Messrs. Haskins & Sells, certified public accountants, as to form of balance sheet to be entered on the books of account of this company, and directing that said balance sheet be set up on a different basis. After discussion, it was, on motion, duly made and seconded, unanimously

Resolved, that this company file supplemental application with the Interstate Commerce Commission asking for a construction of the order of the commission issued December 21st, 1926, Finance Docket No. 5454, specifically authorizing this company to enter on its books its assets and liabilities in the form recommended by Messrs. Haskins & Sells, certified public accountants.

Resolved, further, that George B. Elliott, advisory counsel of this company, be and hereby is designated as the executive officer to prepare and file with the Interstate Commerce Commission a supplemental application for an order, authorizing this company to enter on its books its assets and liabilities in the form recommended by Messrs. Haskins & Sells aferosaid, and as such executive officer to make return to any questionnaire that may be required by the commission in such supplemental proceeding.

I, Herbert L. Borden, secretary of the Atlanta, Birmingham and Coast Railroad Company, do hereby certify that the above and foregoing is a correct excerpt from the minutes of meeting of the board of directors of the Atlanta, Birmingham and Coast Railroad Company, duly called and held at 71 Broadway, in the city of New York, N. Y., on the seventeenth day of August, 1927, at which a quorum was present and voted.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Atlanta, Birmingham and Coast Railroad Company this eighteenth day of August, 1927.

Herbert L. Borden, Secretary. (Seal.)

[fol. 382] EXHIBIT A TO SUPPLEMENTAL APPLICATION

Haskins & Sells, Certified Public Accountants

Offices in the Principal Cities of the United States of America and in London, Paris, Berlin, Shanghai, Montreal, Havana, Mexico City.

30 Broad Street, New York

June 7, 1927.

Atlanta, Birmingham and Coast Railroad Company, Atlanta, Georgia.

DEAR SIRS:

We have given careful consideration to the basis on which your books should be opened as of January 1, 1927, in order properly to record the property and other assets,

rights, franchises, and accounts of the Atlanta, Birmingham and Atlantic Railway Company, taken over from the receiver of that company as at 12.01 a. m. January 1, 1927.

We submit a tentative balance sheet at the commencement of business January 1, 1927. This balance sheet has been prepared upon the basis of the value shown by the books of the predecessor company, the Atlanta, Birmingham and Atlantic Railway Company, as of December 31, 1926, except for investments in road and general expenditures, as to which we have used the cost of reproduction new, as of June 30, 1914—Interstate Commerce Commission's valuation—plus additoions and betterments on investment in road (net) to December 31, 1926. This basis is conservative and, in our opinion, is proper.

The order of the Interstate Commerce Commission dated December 21, 1926, authorizing the issuance of the company's preferred and common capital stocks contained the following proviso:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

This proviso is susceptible of different interpretations, but since the actual consideration received by the company for the issuance of its preferred and common stocks was the net assets of the predecessor company, the basis of stating the accounts as outlined in the foregoing, in our opinion, conforms to the order of the commission. No more accurate determination of the value of the property appraised by the commission is available than that appraisal. This value, plus the other net assets and minus the par value of the preferred stock issued, must of necessity be the cash value of the common stock issued.

[fol. 383] The only other interpretation of the commission's order which is different in principle is that the value of the net assets acquired by the company is represented by the par value of the preferred stock and the amount of

cash actually expended by the Atlantic Coast Line Railroad Company. In our opinion, this interpretation is not applicable, for the following reasons:

(a) The order specifies that after stating the cash value of the preferred stock on a basis not in excess of its par value the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor. The record of the reorganization, the orders of the court, the charter of the company, and the report and preliminary order of the commission all show that the plan which was approved contemplated the issuance of the preferred and common stocks in consideration of conveyance to the company of the property and assets formerly owned by the Atlanta, Birmingham and Atlantic Railway Company; and that the preferred and common stocks were in fact issued in consideration of the transfer to the company of such property and assets, which had been acquired at foreclosure sale by a purchasing committee representing the bondohlders.

(b) The record of the reorganization further shows that no part of the money to be paid by the Atlantic Coast Line Railroad Company was to be paid to the new company.

(c) The records show that the new company received no money or other property from the Atlantic Coast Line Railroad Company.

Since the company received nothing in the way of money or property from the Atlantic Coast Line Railroad Company, this latter interpretation of the Commission's order should not, in our opinion, be adopted; that is to say, since the Atlanta, Birmingham and Coast Railroad Company received nothing from the Atlantic Coast Line Railroad Company, the amount expended by the Atlantic Coast Line Railroad Company should not be set up on the books of the new company as the amount received for its common capital stock.

Furthermore, it is obvious that the amount of cash expended by the Atlantic Coast Line Railroad Company is not a measure of the value of the property received by the Atlanta, Birmingham and Coast Railroad Company, but represents merely the immediate and direct cash cost, exclusive of the guaranties and other considerations, of the common

stock to the stockholder—the Atlantic Coast Line Railroad Company. In no other reorganization which has come to our notice has it been considered that the value of the property to the corporation is fixed by the cost of the stock to the stockholders. If such a basis were used in this case, the investment in road would be stated at an amount which represents only a small percentage of its value as appraised by the Interstate Commerce Commission.

Yours truly, (Signed) Haskins & Sells.

[Copy.]

[fol. 384] Atlanta, Birmingham & Coast Railroad Co.—Tentative Balance Sheet at the Commencement of Business January 1, 1927

Assets

Investment in road and equipment:			
Road		$23,051,260.00	
Equipment		4,306,660.00	
General expenditures		2,113,939.00	
Total investment in road and equipment			$29,471,859.00
Miscellaneous physical property:			
Non-carrier land and buildings		960,241.30	
Jacksonville extension		301,218.99	
Leased rail, etc.		1,509.71	
Total miscellaneous physical property			1,262,970.00
Investments in affiliated companies:			
Eastern Realty Company—			
Capital stock		122,500.00	
Notes receivable		74,680.00	
Total investments in affiliated companies			197,180.00
Other investments: Capital stock of the Atlantic Compress Company			1,100.00
Total investments			30,933,109.00
Current assets:			
Cash on hand and on deposit		57,691.69	
Cash in transit from agents and conductors		50,446.81	
Deposit with Fulton National Bank, Atlanta, Georgia		39,488.06	
Deposit with Equitable Trust Company, New York		194,693.28	
Deposit with Guaranty Trust Company of New York		3,138.13	
Special deposits—			
Old Colony Trust Company	$50.00		
Farmers' Loan and Trust Company	125.00		
Columbia Trust Company	2,241.65		
Columbia Trust Company for equipment obligations	25.00		
Columbia Trust Company for organization expenses	559.57		
		3,001.22	

Assets—Continued

Traffic and car service balances receivable—			
Scrip mileage unreported	70.84		
Interline freight balances receivable	28,243.72		
		28,314.56	
Net balance receivable from agents and conductors		26,258.41	
Miscellaneous accounts receivable—			
Freight claims collectible	13,604.16		
Bills collectible	264,561.29		
		278,165.45	
Materials and supplies—			
Coal stock	61,555.29		
Commissary stock	10,019.88		
Roadway stock	424,648.34		
Store stock	285,229.94		
Mechanical store stock	37,130.18		
		818,583.63	
Other current assets, way bills in transit, advances		3,051.43	
Total current assets			1,502,832.67
Deferred assets:			
Working fund advances—			
Southern Freight Association		450.00	
Southeastern Passenger Association		100.00	
Southern Freight Association		704.00	
Southeastern Demurrage and Storage Bureau		416.00	
Southern Weighing and Inspection Bureau		1,088.00	
Total deferred assets			2,758.00
Unadjusted debits:			
Insurance premiums paid in advance		1,122.64	
Suspended debits		25.63	
Freight claims unadjusted		17,234.72	
Material freight clearing account		.57	
Car repair bills, American Railway Association accrual		58,453.30	
Freight revenue estimate		49,569.23	

Assets—Continued

Passenger revenue estimate	3,520.00	
Hire of freight cars, accrual	34,999.32	
Pullman surcharge, accrual	483.84	
Department bills	139.74	
Fitting up new steel center sills	549.27	
Material store expense	D 66.81	
Claim agents' drafts, suspense	D 19.00	
Vouchers for payment of interest in excess of accruals	11,905.76	
Total unadjusted debits		177,918.21
Total		32,616,617.88

"D" denotes decrease.

[fol. 385]

Liabilities

Capital stock:		
Preferred stock 5% cumulative from January 1, 1928 (authorized, 52,000 shares of $100.00 each; outstanding, 51,803 shares)	$5,180,300.00	
Common stock (authorized and outstanding, 150,000 shares without par value)	24,553,567.55	
Total capital stock		$29,733,867.55
Long-term debt:		
Funded debt unmatured—		
Georgia Car and Locomotive Company (for receiver's notes, numbers 29 to 32 and 34 to 40, inclusive, eleven notes, secured by equipment of 30,000 series, $7,500.00 each, one maturing each month)	82,500.00	
Virginia Bridge and Iron Company (for receiver's notes, numbers 49 to 66, inclusive, seventeen notes of $10,000.00 each and one—the last—of $7,000.00, secured by equipment of 57,000 series, one maturing each month)	177,000.00	
Virginia Bridge and Iron Company (for receiver's notes, numbers 71 to 91, inclusive, twenty-one notes of $3,000.00 each, one maturing each month, secured by equipment of 12,000 series)	63,000.00	
Total long-term debt		322,500.00

Liabilities—Continued

Current liabilities:		
Traffic and car service balance payable—		
Car service balances, payable	$64,018.46	
Interline ticket balances, payable	15,088.98	
		79,107.44
Audited accounts and wages payable—		
Audited vouchers	240,575.50	
Pay rolls	203,830.23	
		444,405.73
Miscellaneous accounts payable—		
Auto Sales Corporation	26.40	
Claim agents' drafts	215.50	
Freight claims payable	8,809.96	
Ticket redemption drafts	43.86	
Tie and timber drafts	23.80	
Agents' drafts in transit	4,596.96	
Due to reorganization committee for redemption of bonds	44.07	
		13,760.55
Interest matured unpaid—		
Atlantic & Birmingham Railway Company first mortgage bonds—		
Coupon number 33, due July 1, 1920	25.00	
Coupon number 34, due January 1, 1921	25.00	
		50.00
Atlanta, Birmingham and Atlantic Railway Company income bonds—		
Coupon number 1, due September 1, 1916	166.65	
Coupon number 2, due March 1, 1917	200.00	
Coupon number 3, due September 1, 1917	200.00	
Coupon number 4, due March 1, 1918	200.00	
Coupon number 5, due September 1, 1918	325.00	
Coupon number 6, due March 1, 1919	300.00	
Coupon number 7, due September 1, 1919	425.00	
Coupon number 8, due March 1, 1920	425.00	
		2,241.65
Unmatured interest accrued—		
Georgia Car and Locomotive Company, notes 29 to 32 and 34 to 40, inclusive	6,857.60	

Liabilities—Continued

Virginia Bridge and Iron Company, notes 49 to 66, inclusive	8,031.99		
Virginia Bridge and Iron Company, notes 71 to 91, inclusive	1,920.07		
		16,809.66	
Other current liabilities—			
Waybills in transit, prepaid	18,099.41		
Order notify deposits with agents	209.26		
		18,308.67	
Total current abilities			574,683.70
Deferred liabilit lies:			
Other deferred liabilities—			
City of Birmingham, Alabama		786.57	
Talbotton Trap Rock Company		562.07	
Alabama Cooperage Company		307.91	
Jefferson Lumber Company		217.68	
Walker Roofing Company		131.12	
Steel Saw Mill Company		54.62	
E. L. Vance Lumber Company		6.65	
Wiggington Cooperage Company		95.71	
T. A. Eubanks		163.42	
Buck Coal Company		682.43	
J. T. Dyal		372.36	
Vance Sand Pit		321.57	
[fol. 386] Total deferred liabilities			3,702.11
Unadjusted credits:			
Tax liability		7,966.92	
Other unadjusted credits—			
Unmatured rents accrued, Atlanta Terminal Company	$750.00		
Southern interchangeable mileage	1,319.25		
Store freight clearing account	710.20		
Suspended credits	34,966.06		
Reserve for personal injuries account No. 420	15,000.00		
Fruit Growers Express, refrigeration	3,034.63		
		55,780.14	

Liabilities—Continued

Accrued depreciation, road—			
Station and office buildings, frame	184,689.35		
Station and office buildings, brick	35,081.98		
Roadway buildings	121,215.31		
Water stations	41,542.51		
Fuel stations	14,712.88		
Shops and engine houses	52,077.19		
Wharves and docks	155,692.38		
Power plant buildings	6,221.18		
		611,232.78	
Accrued depreciation, equipment—			
Locomotives, freight	482,284.06		
Locomotives, passenger	75,960.05		
Locomotives, switching	66,512.01		
Freight-train cars, wood	401,954.28		
Freight-train cars, steel	147,118.16		
Passenger-train cars	93,349.30		
Motor cars	3,993.29		
Work equipment, private cars	10,277.74		
Work equipment, miscellaneous	23,237.20		
Automobiles	2,198.59		
		1,306,884.68	
Total unadjusted credits			$1,981,864.52
Total			32,616,617.88

EXHIBIT B TO SUPPLEMENTAL APPLICATION

Interstate Commerce Commission,

Bureau of Accounts

Washington, Aug. 3, 1927.

434850

Mr. E. L. Greene, Auditor, Atlanta, Birmingham and Coast Railroad Company, Atlanta, Georgia.

DEAR SIR:

Receipt is acknowledegd of your letter of June 20, 1927, file 56,000, submitting copies of opening entries recording the acquisition of the property of the Atlanta, Birmingham and Atlantic Railroad Company, together with report prepared by Haskins & Sells, setting forth their reasons why the proposed entries should be approved.

The entries submitted are not acceptable in that the initial charge to account 701, "Investment in road and equipment," is based upon a valuation (reproduction cost new) instead of cost. This charge is excessive in the sum of the difference between $24,553,567.55 and $2,162,582.34, or $22,390,985.21, the former sum representing the alleged value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line Railroad in consideration of the payment by that company of current outstanding liabilities of the receiver, reorganization expenses, etc., amounting in the aggregate to $4,080,699.80. This sum less $1,918,117.46, representing depreciation charges set up in account 775, "Accrued depreciation, road," and 776, "Accrued depreciation, equipment," constitutes the $2,162,582.34 referred to above. [fol. 387] The commission's order of October 26, 1926, under Finance Docket No. 5454 and your company's certificate of notification to the commission dated January 10, 1927, explicitly sets forth that the no-par common stock shall be and was actually issued to the Atlantic Coast Line in consideration of that carrier assuming the obligations before mentioned.

While it is true, as stated by Haskins & Sells, that your company did not receive actual cash or property as a result of the action of the Atlantic Coast Line, your company, however, was directly benefited thereby to the extent of

$4,080,699.80. Therefore, it will be necessary for you to consider the sum of $4,080,699.80 as the cash value of the 150,000 shares of no-par stock issued to the Coast Line Railroad Company. Assuming, therefore, that the other assets and liabilities are correctly stated in the tentative balance sheet prepared by Haskins & Sells, in compliance with the orders of the commission you are directed to reduce the initial charges to account 701 by $22,390,985.21, the compilation of which is explained in the second paragraph hereof.

As the correction will place the initial charge to investment account on basis of money costs, it is of course proper that the depreciation reserves referred to in the second paragraph hereof should be cancelled.

Please submit corrected copies of the opening entries to this bureau for completion of its files.

Yours very truly, (S.) Alexander Wylie, Director.

EXHIBIT C TO SUPPLEMENTAL APPLICATION

Interstate Commerce Commission,

Bureau of Accounts

Washington, July 1, 1927.

Mr. M. T. Lanigan,
Auditor, Georgia and Florida Railroad,
Augusta, Georgia.

DEAR SIR:

Referring to the two volumes left with me recently showing opening entries and balance sheet statements relative to the acquisition of property from the Georgia and Florida Railway under Finance Dockets Nos. 5812 and 5860:

It is noted that your company proposes to perpetuate the investment figures of the old Georgia and Florida Railway and receiver as of December 31, 1926, by charging to the investment account $18,020,396.96 for road and equipment. The commission's tentative final valuation of the property of the old Georgia and Florida Railway is contained in valuation docket No. 330. On page five of this docket you will observe that the tentative final value of

this property as of June 30, 1918, based on 1914 prices, is [fols. 388-410] computed in the sum of $4,500,000, as compared with a recorded investment in road and equipment at the same time of $15,599,360.59. Since this valuation was made, the old Georgia and Florida Railway acquired the property of the Augusta Southern, the final value of which property as of June 30, 1916, in Valuation Docket No. 263, is computed by the commission in the sum of $900,000.

With the foregoing facts in mind this bureau does not approve of the perpetuation of the old investment figures in that the proposed charges to account 701, "Investment in road and equipment" would not represent the money cost of the properties acquired, as required by the commission's classifications. This condition is further emphasized by the fact that the predecessor carrier, as of August 31, 1926, had a deficit in corporate surplus of $9,318,320.01.

Under the circumstances this bureau will approve entries charging account 701 with the combined tentative final and final valuations of the old properties acquired by your company aggregating $5,400,000, plus the net of actual costs of all additions and betterments, less retirements made to the respective properties since valuation dates to December 31, 1926, inclusive. The difference between the total assets acquired (including road and equipment), less liabilities assumed, and the par value of the securities issued, should be accounted for appropriately in account 724, "Discount on capital stock," and 725, "Discount on funded debt." In this connection, see section 3, page 40, Classification of Income, Profit and Loss, and General Balance Sheet Accounts.

The foregoing accounting should cancel the proposed entry in account 776, "Accrued depreciation, equipment," crediting that account with $114,557.55. The proposed credit of $4,434,613.24 to account 751 "Capital stock," representing liability for 100,000 shares of no par value capital stock, should also be cancelled. This liability may be recorded in the nominal sum of $1.00 if so desired.

It is also noted that there is temporarily deposited with the New York Trust Company cash and securities aggregating $2,073,433.41, which sum is to be ultimately expended for the new Greenwood extension. These funds are classified in accounts 707, "Other investments," and 708 "Cash."

It appears that the classification should be in account 711, "Special deposits."

There is set aside a sum of $100,000 for rebuilding freight cars. Please submit to this bureau as early as possible a comprehensive statement of the estimated amount necessary to rebuild the equipment acquired. See last paragraph, Account II, Equipment, page 33, Classification of Investment in Road and Equipment.

Will you please submit new entries based on the foregoing at your earliest convenience?

Yours very truly, (Signed) Alexander Wylie, Director.

(Copy.)

[fol. 411] Before the Interstate Commerce Commission. Finance Docket No. 5454. Reorganization and control of Atlanta, Birmingham & Atlantic Railway Company

Statement of petitioner, Atlanta, Birmingham & Coast Railroad Company, in connection with its supplemental petition for a construction of the order of this commission entered December 21, 1926

Facts from the Record

In addition to the recitals of fact set up in the supplemental petition, this petitioner (Atlanta, Birmingham & Coast Railroad Company) respectfully calls to attention of the commission, the following brief synopsis of the history of this transaction:

I. Negotiations leading to acquisition of Atlanta, Birmingham & Coast Railroad Company

When the bondholders' committee of the insolvent Atlanta, Birmingham & Atlantic Railway Company sought to sell that property to Atlantic Coast Line Railroad Company, the latter company specifically refused to purchase the property itself, but agreed that if the bondholders would form a new company and cause it to acquire the property and franchises of the Atlanta, Birmingham & Atlantic Rail-
[fol. 412] way Company the Atlantic Coast Line Railroad would purchase, subject to the approval by the Interstate

Commerce Commission, all of the voting common capital stock of such new company, thereby acquiring control thereof. The terms of this arrangement were specifically set out on the agreement of February 23, 1926, which appears in the record, Finance Docket No. 5454, as Exhibit 5.

II. Application of Bondholders to Interstate Commerce Commission

Pursuant to the foregoing arrangement, Francis R. Hart, G. E. Warren, Geo. E. Roosevelt, and James H. Perkins, as the reorganization committee, filed with this commission their application for authority to acquire and operate the property and franchises of the insolvent Atlanta, Birmingham & Atlantic Railway Company under the provisions of paragraph 18 of section 1 of the act, and also for authority to issue the preferred and common stock contemplated for such new company under the provisions of paragraph 2 of section 20a of the act.

The regulations of the commission governing the filing and contents of applications for certificates of this character (commission's order of July 22, 1924, as amended) provides that said applications shall set up, among other things, "nature of the application and the purposes and uses of the proposed issue and the proceeds thereof." The bondholders, in filing their application in response to the above quoted requirements, stated:

"Fifth: The purposes and uses of the proposed issue of capital stock are *to acquire the lines of railroad and other properties of the Old Company* and its receiver, as aforesaid, and to carry out the plan." (Italics ours.)

The commission was thus notified at the outset that authority was sought for the New Company to acquire the properties of the Atlanta, Birmingham & Atlantic Railway Company and to pay for the same by the issue of its preferred and common capital stock. The plan aforesaid and the application were approved by the United States District Court.

III. First Report and Order of the Commission

On October 26, 1926, the commission handed down its first report and order approving and authorizing the acquisition by the bondholders of the property and franchises of the

Atlanta, Birmingham & Atlantic Railway Company, but, inasmuch as the bondholders were not incorporated, and, under the Georgia law, could not acquire a charter until after the special master had conveyed the property, the commission deferred further action as to authorizing the issuance of the capital stock under the provisions of section 20a.

[fol. 413] IV. Charter of Atlanta, Birmingham & Coast Railroad Company

Armed with the above approval, the bondholders applied to the State of Georgia for a charter, which was duly granted. The application for a charter substantially set out the facts recited above. In authorizing the issuance of the preferred and common stock the charter specifically provided that—

"authority is hereby conferred for the issue of all or any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock *for the purpose of acquiring and paying for the property and assets described in article first hereof* (property of the Atlanta, Birmingham & Atlantic Railway Company) and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926." (Italics ours.)

V. Organization of New Company (Atlanta, Birmingham & Coast Railroad Company)

Upon the issuance of this charter the Atlanta, Birmingham & Coast Railroad Company, the new company organized, and thereupon filed a supplemental application in Finance Docket No. 5454, attaching thereto a copy of said charter and asking that it be substituted as applicant for the bondholders' committee that filed the original application.

VI. Second Report and Order of the Commission

On December 21, 1926, this commission issued its second report and order and authorized the Atlanta, Birmingham & Coast Railroad Company to issue the preferred and common stock for the purposes and uses set out in the application. As noted above, those purposes and uses were for

the acquisition of the property of the Atlanta, Birmingham & Atlantic Railway Company. The said second report, in granting the authority aforesaid, stated:

"*The application will be granted,* subject, however, to the condition that the Atlanta, Birmingham & Coast Railroad Company, in setting up its investment account, shall not include therein any amount in excess of the par value of the preferred capital stock authorized to be issued and the amount actually received in consideration of the issuance of its nopar common stock." (Italics ours.)

The order issued under the provisions of this report, brought forward the above condition in the following language:

"Provided, however, and authority to issue said stock is granted upon the express condition that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the ac- [fol. 414] counts, be reckoned on a basis not in excess of its par values; *and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.*" (Italics ours.)

The issue now submitted to this commission is the construction of this condition. The authority conferred by the order was accepted by the Atlanta, Birmingham & Coast Railroad Company, subject to the condition recited, taking the said condition to mean what the language thereof stated. Acting upon this authority, the Atlanta, Birmingham & Coast Railroad Company and the bondholders' committee entered into—

VII. Agreement of Sale

The Atlantic Coast Line Railroad Company was not a party to this agreement. The agreement undertook to set out the consideration and the terms under which the committee of bondholders, then holding title to the property of the Atlanta, Birmingham & Atlantic Railway Company, were to convey the same to the Atlanta, Birmingham & Coast Railroad Company. Under these terms the preferred stock was to be issued and delivered to the bondholders'

committee by the Atlanta, Birmingham & Coast Railroad Company. The common stock was to be issued upon order of the bondholders' committee and thereafter, upon compliance by the Atlantic Coast Line Railroad Company, with certain agreements, to be delivered for the bondholders' committee to the Atlantic Coast Line Railroad Company.

VIII. The Settlement

Pursuant to the terms of the agreement of sale and carrying out the provisions of the agreement of February 23, 1926, the parties met across the table. The preferred stock was issued and delivered to the bondholders' committee. The common stock was issued upon order of the bondholders' committee and held, pending discharge of obligations assumed by the Atlantic Coast Line Railroad Company, and the Atlantic Coast Line Railroad Company thereupon paid the several amounts it had agreed to pay in the agreement of February 23, 1926. None of this money was paid to the Atlanta, Birmingham & Coast Railroad Company. Not one penny of said amount was received by the Atlanta, Birmingham & Coast Railroad Company. On the contrary, the money was paid to the creditors of the old Atlanta, Birmingham & Atlantic Railway Company, named in the agreement of February 23, 1926, aforesaid, as follows:

1. Taxes.

2. Indebtedness for material and supplies. These amounts were paid to the receiver of the Atlanta, Birmingham & Atlantic Railway Company.

3. Birmingham Trust & Savings Bank loan. This amount was paid to the owner of the note.

[fol. 415] 4. National Bank of Commerce loan; paid to the owner of the note.

5. United States Government matured note.

6. United States Government unmatured note.

7. United States Government unmatured equipment notes. These amounts were paid to the Treasury Department of the United States.

8. Unmatured notes for rebuilding equipment. These notes were assumed by the Atlantic Coast Line Railroad Company, to be paid at maturity.

9. Receivership, reorganization, and miscellaneous expenses. These amounts were paid to the bondholders' committee of the Atlanta, Birmingham & Atlantic Railway Company.

IX. Résumé of Foregoing Facts

From the foregoing recital it appears that this commission gave authority to the Atlanta, Birmingham & Coast to issue 150,000 shares of no-par value common stock, upon condition that "the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

The Atlanta, Birmingham & Coast accepted this condition, issued its preferred and common stock for the purpose set out in its application to this commission, and authorized in its charter, to wit, as consideration for the lines of railroad and other properties of the Atlanta, Birmingham & Atlantic Railway Company. These properties were conveyed under the terms of the agreement of sale by deed from the purchasing committee of the bondholders in consideration of and in exchange for the entire issue of capital stock, preferred and common. Pursuant to said provisions, the preferred stock was issued direct to the bondholders' committee, and upon order of that committee the common stock was issued and, after the making by Atlantic Coast Line of certain payments to creditors of the Old Company, was, on behalf of the bondholders' committee, delivered to the Atlantic Coast Line.

Before setting up the accounts of the new company the record and facts were submitted to Haskins & Sells, certified public accountants, of New York, and said accountants were requested to study the same and to set up a balance sheet for the New Company to begin business as of January 1, 1927. Haskins & Sells made their report and submitted a balance sheet with their recommendation that it be adopted for the purpose aforesaid. In this balance sheet Haskins & Sells in arriving at the assets adopted as the present investment the value found by this commission in Valuation Docket No. 1, valuation of Atlanta, Birmingham & Atlantic Railway Co., as of valuation date, plus additions and betterments, less retirements, from said valuation date to January 1, 1927. On the liability side they set up the preferred stock at par, in accordance with the terms of the condition imposed, and, in like manner, they set up the com-

[fol. 416] mon stock at the amount of the assets, less the preferred stock and other liabilities.

When this tentative balance sheet was submitted to the Bureau of Accounts of the Interstate Commerce Commission, Director Wylie wrote the Atlanta, Birmingham & Coast that it was disapproved and directed that the value of the 150,000 shares of common stock should be set up at $4,080,699.80 as the sum of money paid by Atlantic Coast Line Railroad Company to or upon the order of the bondholders' committee in purchasing the said stock.

Argument

The question now is the construction of the condition imposed by the commission in granting authority to the Atlanta, Birmingham & Coast to issue said common stock.

The authority was granted to the Atlanta, Birmingham & Coast Railroad Company upon its application. The application stated that the stock was to be issued in exchange for the property of the Atlanta, Birmingham & Atlantic Railway Co. As a matter of fact, the stock was issued in exchange for that property. The question is, therefore, the construction of the language "that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

The familiar rule for construction of statutes or orders of legislative effect is thus stated in the Encyclopedia of Law:

"In order to ascertain the legislative intention the primary rule is that a statute is to receive that meaning which the ordinary reading of its language warrants. Words not technical being taken in their ordinary familiar acceptation, with regard to their general and popular use, and the meaning thus arrived at must be adopted when it involves no absurdity."

This rule is of such frequent application and so well known that citation of authority seems unnecessary. In the present case the language is not technical and the meaning should be taken as that which the ordinary reading of the language warrants.

In Thornley vs. U. S., 113 U. S. 310, 28 L. Ed. 999, the court states the rule as follows:

"Where the meaning of the statute is plain, it is the duty of the courts to enforce it according to its obvious terms. In such a case there is no necessity for construction."

In Board of Lake County Commissioners vs. Rollins, 130 U. S. 662, 32 L. Ed. 1060-1063, the court says: "So, also, where law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction," citing cases.

And the commission has frequently applied this rule to its orders, etc.

[fol. 417] In Charles Boldt vs. P. C. C. & St. L. Ry. Co., 42 I. C. C. 308-310, it is stated:

"While it may have been the intention of defendants to apply the tariff in its restricted sense, tariffs are to be construed according to their language and the intention of the framers is not controlling."

In Flanley Grain Company vs. Director General, 89 I. C. C. 33-36, there was involved the construction of a certain reconsignment tariff and the defendant contended that the term "disposition orders" used therein had a special meaning in traffic parlance and implied delivery only to points within the switching limits. The commission said:

"This contention is not persuasive. The words of a tariff should be construed in their ordinary sense, and where the meaning, so construed, is clear it must govern."

In the present case, applying these rules, there is no room for construction. The order stated in terms that the cash value of the common stock was to be set up on a basis not in excess of the amount received therefor. The actual consideration for the common stock is, therefore, the property of the Old Company expressed in cash as of the date of its receipt.

The text of account No. 41, "cost of road purchased," provides that the account shall include the cash cost of any road and that "where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis." Also, this petitioner realized that this commission has held that the value of the

property, as shown upon the books of accounts of carriers, should, in the opinion of the commission, represent the "reasonable and necessary investment." In the O'Fallon case, this commission said:

"Value rests upon a number of elements. The value of the property of railroads for rate-making purposes, which is construed to be the value of property devoted to common-carrier purposes upon which common carriers are entitled under the law to earn a fair return, approaches more nearly the reasonable and necessary investment in the property than the cost of reproducing it at a particular time. In those cases, of which there are many and of which the present case is an example, where it is impossible to ascertain and analyze the actual investment, resort must be had to the application, to complete property inventories, of unit prices derived from actual costs paid by carriers over a considerable period of years when railroad construction was being carried on extensively.

. . . . . .

"The method which we therefore find logical and proper for determining the value in the subsequent recapture periods is to add to or subtract from the 1919 value the net increases or decreases in the investment in property devoted to transportation service as determined from the carrier's returns to valuation order No. 3, with due regard to the element of depreciation."

[fol. 418] It appears, therefore, that this petitioner, in determining the then cash value of the property representing the investment necessarily and reasonably made, has taken the figures found by this commission on valuation date and, in accordance with the method prescribed, has added thereto additions and betterments, less retirements. It has been noted that the value thus found is based upon the value fixed by the commission for rate-making purposes, but since a value for rate-making purposes includes only property which on valuation date was actually in use in the service of the public as a common carrier, it is obviously and admittedly a value which is lower than the possible value of all the assets of the corporation, since it admittedly does not include assets not at that time in service of the public. It is, therefore, respectfully submitted that according to the

views and decisions of this commission the figure adopted by Haskins & Sells for the purpose of recording the investment in road and equipment in the balance sheet recommended to this company is fairly and reasonably determined and, according to the rules of this commission, fairly represents the amount that should be set up on the books of this company for that purpose.

This being the case, this petitioner respectfully asserts that it has fully and completely complied with the terms of the condition imposed by the commission in granting the authority aforesaid and that it is beyond the power of the Bureau of Accounts to substitute another and different meaning and to require of this carrier a setup on its books which does not represent the actual facts. It is admitted and conceded that this commission is given authority by Congress to direct the method of accounting on the part of carriers subject to its jurisdiction. It is not admitted that this commission is given authority and power to direct a reporting carrier in recording its accounts to set up figures not in accord with facts.

It is further respectfully submitted that in issuing the instructions aforesaid, the Bureau of Accounts has confused the amount received by the Atlanta, Birmingham & Coast for its common capital stock with the amount received by the bondholders when they sold the stock to Atlantic Coast Line Railroad Company.

The argument of the bureau that the sale value of this stock represented its market price and therefore represented the value of the property theretofore received by Atlanta, Birmingham & Coast Railroad Company is futile and can not logically be applied unless the accounts of the carriers recording investment in road and equipment are to be changed daily or at least monthly, so as to make their accounts coincide with the market value of the stocks as quoted on the Stock Exchange in New York. It seems to us that this is a reductio ad absurdam.

That the result that would be brought about by adopting the bureau's recommendation would lead to absurdities and great injustice can be illustrated in several ways.

[fol. 419] Actual investment figures of the Atlanta, Birmingham & Atlantic, predecessor of this company, representing the property now owned by this company, are in excess of $24,000,000, the value fixed by the commission for

rate-making purposes and adopted by this petitioner in setting up its tentative balance sheet. If the instructions of the Bureau of Accounts are adopted, the figure representing the investment in road and equipment will be reduced to approximately $10,000,000, or approximately two-fifths of the recorded investment of the Old Company. Assuming, for purposes of illustration, that the petitioner owns a station building valued at $25,000 and insured for $25,000, said building, on the new set-up of accounts, would be reduced in value to $10,000 on the books of petitioner. Suppose that the building is destroyed by fire and petitioner collects $25,000 insurance. Petitioner will then be in position of having collected $15,000 more than its books show the building to be worth. It is difficult to see where the $15,000, representing the actual value of property destroyed, could be thereafter entered upon its books. If the effect of the order would be to prevent the carrier from collecting more than $10,000, the value arbitrarily fixed by the bureau's order, its effect would be to deprive this petitioner of property without due process of law and obviously unenforceable.

Petitioner gives below, for purposes of illustration, a tentative work-up of the balance sheet as it would appear under the direction of the Bureau of Accounts:

Assets

Investment in road and equipment		$7,080,873.79
Miscellaneous physical property		1,262,970.00
Investment in affiliated companies		197,180.00
Other investments		1,100.00
Current assets		1,502,832.67
Deferred assets		2,758.00
Unadjusted debits		177,918.21
		10,225,632.67

Liabilities

Capital stock, common	$5,180,300.00	
Preferred stock	4,080,699.80	
		9,260,999.80
Funded debt		322,500.00
Current liabilities		574,683.70
Deferred liabilities		3,702.11
Unadjusted credits		63,747.06
		10,225,632.67

It seems absurd to set up on the books of this company as the reasonable and necessary investment seven millions of dollars against property which this commission has solemnly declared to be worth more than twenty-nine millions.

It seems equally absurd to consider setting up a depreciation account against equipment appraised by this commis- [fols. 420 & 421] sion at figures which, with additions and betterments less retirements, produce a present book value of approximately $4,000,000 on a basis which would apparently approximate, when scaled down as recommended by the bureau, approximately $1,500,000.

No Precedent is Involved

It was suggested, in discussing this matter before division 4, that to adopt the recommendation of Haskins & Sells might establish a precedent which would bear improperly upon other cases pending before this commission. It is respectfully submitted that no new precedent would be established, for that in the case of the reorganization (after foreclosure) of the Georgia & Florida Railroad the Bureau of Accounts has taken exactly the position which Haskins & Sells has recommended in their tentative balance sheet. A copy of a letter from Director Wylie to Mr. M. T. Lanigan, auditor of the Georgia & Florida Railroad, attached to this petition, specifically states that—

"under the circumstances this bureau will approve entries charging Account 701 with the combined tentative and final valuation of the old properties acquired by your company aggregating $5,400,000, plus the net of actual costs of all additions and betterments less retirements made to the respective properties since valuation date to December 31, 1926, inclusive."

This is exactly the recommendation of Haskins & Sells in the instant case. It is difficult for this petitioner to understand why the rule applied to the Georgia & Florida upon reorganization is not applicable also to the Atlanta, Birmingham & Atlantic, upon similar reorganization. There is no essential difference in fact involved.

We respectfully ask that the commission authorize this company to apply said rule, approved as to the Georgia & Florida, and to adopt the balance sheet in conformity therewith, as recommended by Haskins & Sells.

Respectfully submitted.

Atlanta, Birmingham & Coast Railroad Co., by Geo. B. Elliott, Advisory Counsel.

[fol. 422] CERTIFICATE OF NOTIFICATION TO THE INTERSTATE COMMERCE COMMISSION OF SECURITIES SOLD, PLEDGED, REPLACED, OF OTHERWISE DISPOSED OF, REQUIRED BY PARAGRAPH (5) OF SECTION 20A OF THE INTERSTATE COMMERCE ACT, INCLUDING OBLIGATIONS OF THE CARRIER AUTHENTICATED OR ISSUED BY TRUSTEES OR OTHERS

Atlanta, Ga., Jan. 10, 1927.

The undersigned hereby certifies that within the 10 days next preceding the above date the Atlanta, Birmingham and Coast Railroad Company has disposed of the securities set forth and described below:

1. Description of securities:
   (A) Preferred capital stock, par value $5,180,300.00.
   (B) Common capital stock without nominal or par value, 150,000 shares.

2. Date of application for authority with respect to the securities: April 8, 1926, supplemental November 26, 1926.

3. Interstate Commerce Commission's finance docket number: assigned to application for authority: 5454.

4. Date of the commission's order authorizing the disposition of the securities: December 21, 1926.

[fol. 423] 5. Date of prior certificate of notification (if any) in which the securities are set forth and described: None.

6. Disposition of the securities:

(A) Authenticated by trustee—

(1) Date of authentication: January 4, 1927.
(2) Date of delivery to carrier: January 4, 1927.
(3) Par value or principal amount—
(a) Preferred capital stock, par value $5,180,300.00.
(b) Common capital stock, 150,000 shares.

(B) Sold—

(1) Date sold: January 4, 1927.
(2) Par value or principal amount: Tentative value, $4,080,699.80.
(3) Name of purchaser: Atlantic Coast Line Railroad Company.
(4) Purpose for which sold—

Common capital stock, without nominal or par value, 150,000 shares issued to the Atlantic Coast Line Railroad Company in accordance with plan and agreement of reorganization for the payment by the Atlantic Coast Line Railroad Company of the following obligations:

All equipment trust notes, matured and unmatured, issued under equipment trust No. 3, dated January 15, 1920, by the Director General of Railroads, the Atlanta, Birmingham & Atlantic Railway Company and the Guaranty Trust Company, New York, as trustee—

Par value	$816,982.65	
Interest at 6% Jan. 15 to Dec. 31, 1926	46,976.49	
		$863,959.14
Note of the A., B. & A. Ry. Co. dated Dec. 20, 1920, payable to the order of the Birmingham Trust & Savings Co	90,000.00	
Interest due thereon	31,395.00	
		121,395.00
Note on B. L. Bugg, receiver of the A., B. & A. Ry. Co., dated March 29, 1926, payable to the order of the Atlantic Coast Line Railroad Company	235,311.96	
Interest due thereon	8,823.19	
		244,135.15
Cash advance Jan. 4, 1927, by the Atlantic Coast Line Railroad Co. to B. L. Bugg, receiver, to apply on payment of obligations of the receiver in accordance with plan and agreement of reorganization		1,323,410.88
Purchase by the Atlantic Coast Line Railroad Company of $405,000.00 par value first and refunding mortgage bonds of the Atlanta, Birmingham & Atlantic Railway Company dated November 1, 1915, which were held by the National Bank of Commerce, New York, as collateral on note for $275,000.00 which bonds were reduced to possession on failure to meet payment of note, November 29, 1922	$364,325.93	
Interest at 6% Feb. 18 to Dec. 31, 1926	18,884.22	
		$383,210.15
Receivership, reorganization and miscellaneous expenses and allowances		600,000.00
To pay equipment obligations of the receiver applying to 300 box cars, 257 coal cars and 100 flat cars	519,500.00	
Interest accrued to Dec. 31, 1926	25,089.48	
		544,589.48
		4,080,699.80

[fols. 424-523]

Note.—These figures are approximate and may be amended or supplemented.

(5) Conditions and terms of sale: In accordance with plans and agreement of reorganization.

(C) Pledged or repledged (stating which)—

(1) Date pledged or repledged: None.

(2) Par value of principal amount: None.

(3) Name of pledge: None.
(4) Purpose of pledge: None.
(5) Conditions and terms of pledge: None.

(D) Otherwise disposed of—

(1) Date disposed of: January 4, 1927.

(2) Par value of principal amount: $5,180,300.00.

(3) To whom disposition was made: To Geo. E. Roosevelt and deposited with American Exchange Irving Trust Company for account of reorganization committee.

(4) Manner and purpose of disposition: Preferred capital stock, par value $5,180,300.00 issued to retire first mortgage gold bonds of the Atlantic & Birmingham Railway Company dated January 1, 1904, par value $4,090,000.00 and income mortgage bonds of the Atlanta, Birmingham & Atlantic Ry. Co., dated November 1, 1915, par value outstanding $4,543,906.78, as provided for in the plan and agreement of reorganization.

(5) Conditions and terms of disposition: As provided in plan and agreement of reorganization.

I, the undersigned, B. L. Bugg, president of the Atlanta, Birmingham and Coast Railroad Company on my oath do say that the annexed return has been prepared under my direction: That I have carefully examined same and declare the same to be a complete and correct statement of the facts set forth therein, to the best of my knowledge, information, and belief.

Atlanta, Ga.

B. L. Bugg, President.

Subscribed and sworn to before me this 15th day of January, 1927.

A. B. Gilbert, Notary Public, State of Georgia at Large. (Seal.) My commission expires March 12, 1929.

[fol. 524] APPLICATION OF ATLANTIC COAST LINE RAILROAD COMPANY UNDER PARAGRAPH 2 OF SECTION 5 FOR AUTHORITY TO ACQUIRE CONTROL BY THE PURCHASE OF ALL OF THE COMMON STOCK OF ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY, A CORPORATION TO BE ORGANIZED TO ACQUIRE AND OPERATE THE PROPERTIES NOW OPERATED BY THE RECEIVER OF ATLANTA, BIRMINGHAM AND ATLANTIC RAILWAY COMPANY, AND, UNDER SECTION 20-A, FOR AUTHORITY TO ASSUME CERTAIN OBLIGATIONS AS TO THE GUARANTY OF DIVIDENDS ON AND THE REDEMPTION OF THE PREFERRED STOCK OF SAID ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY

April 12, 1926.

To the Honorable Interstate Commerce Commission:

Atlantic Coast Line Railroad Company, hereinafter called the applicant, hereby makes application for the approval and authorization of this commission of the acquisition by it of control of Atlanta, Birmingham and Coast Railroad Company, yet to be organized, by the purchase of all of the common, voting, capital stock of said Atlanta, Birmingham and Coast Railroad Company, hereinafter called the carrier, and for authority to enter into certain guaranties as to the payment of dividends on, and the redemption of the pre-[fol. 525] ferred stock of said carrier, as hereinafter more fully set out, and in support of its application respectfully shows the following facts:

1. The exact corporate name of applicant is Atlantic Coast Line Railroad Company.

2. Applicant is a carrier by railroad, engaged in the transportation of persons and property subject to the interstate commerce act.

3. The names, titles, and post office addresses of certain of applicants' officers are: J. R. Kenly, president, Wilmington, N. C.; H. L. Borden, secretary, 71 Broadway, New York; Geo. B. Elliott, vice president and general counsel, by whom this application is signed, verified, and filed and to whom correspondence with reference hereto should be addressed, Wilmington, N. C.

4. Applicant was organized and received its present charter under the laws of the State of Virginia. It is author-

ized to, and does operate also in the States of North Carolina, South Carolina, Georgia, Florida, and Alabama.

Carrier is to be organized under the laws of the State of Georgia, or other State approved by the applicant and the committee representing bonds of the Old Company, hereinafter mentioned, and is to acquire and operate the railroad and property heretofore known as Atlanta, Birmingham and Atlantic Railway and now operated by and/or in the possession of the receiver appointed by the United States District Court for the Northern District of Georgia, as hereinafter set out. The said railroad, with its principal termini, points of interchange, etc., is substantially as set out in Appendix 2 attached to the report of this commission in Valuation Docket No. 1, reported in 75 I. C. C., beginning at page 645.

5. The history of the lines of railroad to be acquired by carrier is substantially as set forth in said report and Appendix 2 in Valuation Docket No. 1, hereinabove referred to, down to the time of the organization of Atlanta, Birmingham and Atlantic Railway Company, hereinafter called the Old Company, in the year 1915, as referred to in Exhibit A, 75 I. C. C., 742.

On February 25, 1921, a receiver, appointed by the United States District Court for the Northern District of Georgia, Northern Division, was put in charge of all of the railroad and other property of said Old Company. Said receiver was appointed at the instance of general creditors, but since such appointment foreclosure proceedings have been instituted under the first mortgage of Atlantic & Birmingham Railway Company and under the first and refunding mortgage and the income mortgage of the Old Company and these proceedings are still pending.

Under date of February 23, 1926, an agreement was entered into between applicant and committees representing the holders of income bonds of the Old Company and the first mortgage bonds of Atlantic & Birmingham Railway Company, which agreement contemplates the acquisition by carrier, when organized, of all the property now in the possession of the receiver, above referred to

[fol. 526] Carrier is to have an authorized capitalization of $5,200 par value of preferred stock and 150,000 shares without par value of common stock. The preferred stock is to be preferred as to cumulative dividends at the rate

of 5% per annum (accruing from one year after title to the properties to be acquired by the carrier shall vest in the carrier), and as to assets at $100 and accrued dividends; to be redeemable as a whole but not in part at 103 and accrued dividends; and to have no power to vote except in case of continuing default in the payment of two semi-annual dividends, in which case the preferred stock is to have exclusive voting power so long as any default shall continue. Dividends at the rate aforesaid and the redemption of the preferred stock upon the liquidation, merger or consolidation of the carrier or any transfer of all or a substantial part of the property of the carrier, are to be guaranteed by the applicant. The said preferred stock and common stock are more particularly described in the plan.

If this agreement and the plan therein contemplated is approved and authorized by this commission, said preferred stock, upon consummation of the plan, will be issued at the rate of $60.00 of stock for $100.00 of bonds to the holders of income bonds and first-mortgage bonds who shall assent to the plan therein provided, and applicant will guarantee the preferred stock issued as therein provided for in the manner and to the extent therein set out, and will execute an instrument of guaranty as therein provided, and will in consideration of the payments hereinafter set forth become the owner of the entire issue of common stock of the carrier and of so much of the preferred stock as would, under the terms of the said agreement, have been issued to the holders of any first-mortgage bonds and/or income bonds who shall not assent to the plan, as aforesaid, had such holders assented.

Applicant avers that the continued operation of the railroad of the Old Company is in the public interest; that the plan herein contemplated will accomplish such continued operation with such ample assurance of financial stability as has not heretofore been possible, and that no other plan has been possible of accomplishment which would assure such continued operation and provide an equally satisfactory recompense to the holders of the bonds, constituting a lien on the properties of the Old Company.

The plan contemplates that all claims having priority over the mortgages o the Old Company, loans of the Old Company for which bonds of the Old Company have been pledged, equipment obligations of the Old Company for-

merly held by the United States Government (if it is necessary to pay off the same), obligations of said receiver, and receivership and reorganization expenses are to be paid in cash, to be provided by the applicant upon the acquisition of the properties by the carrier, except that obligations not matured at the time of the acquisition may be assumed by the carrier instead of being paid in cash. This provision [fol. 527] provides for the payment or retirement of all first and refunding mortgage bonds of the Old Company, and the mortgage securing said bonds is to be released and discharged.

Details of the plan and of the agreement of February 23, 1926, will be presented at the hearing of this application.

As to the value of the stock to be acquired by applicant, reference is made to Valuation Docket No. 1, hereinabove referred to.

6. The lines of carrier do not parallel or compete with those of applicant, but rather form connections therewith which will afford applicant access over its owned and controlled rails from Jacksonville and Thomasville to Atlanta and Birmingham, at which points connection will be made with the lines of Nashville, Chattanooga and St. Louis Railway and of Louisville and Nashville Railroad.

In its report in Docket 12964—Consolidation of Railroads—this commission assigns to system No. 11, A. C. L.-L. & N., the railroad of the Old Company, with no suggested assignment of any portion of said lines to any other system and applicant avers that such assignment is proper and in accordance with the requirements of section 5 of the interstate commerce act.

7. The officers and directors of carrier have not, of course, yet been elected or appointed. If it should develop that application for authority under paragraph 12 of section 20-a is necessary, such application will be filed hereafter and as soon as the facts permit.

8. The making and filing of this application was authorized and directed by the executive committee of the board of directors of applicant at a meeting duly called and held on the tenth day of April, 1926.

9. Applicant is advised that an application under paragraph 18 of section 1, and under section 20-a of the interstate commerce act has been filed by or on behalf of carrier,

and since the subject matter of this application is so interrelated with that of carrier's said application it is respectfully prayed that the two applications be heard and considered together.

Exhibits as required by the orders of this commission, dated September 1, 1922, and July 22, 1924, are filed herewith.

Wherefore, applicant respectfully prays that the acquisition by it of control of the carrier and the assumption by it of obligations with respect to the preferred stock of carrier as herein set out be approved and authorized.

Atlantic Coast Line Railroad Company, by Geo. B. Elliott, Vice President and General Counsel.

State of North Carolina,
County of New Hanover:

Geo. B. Elliott, whose name is signed to the foregoing and hereto attached application of Atlantic Coast Line Railroad Company, hereby makes oath that he has knowledge of the things therein stated and that the same are true to the best of his knowledge, information, and belief, and that he [fols. 528-531] is duly authorized by Atlantic Coast Line Railroad Company to verify and file this application on its behalf.

Geo. B. Elliott.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this — day of April, 1926.

B. B. Reynolds, Notary Public. My commission expires Dec. 30, 1927.

[fol. 532] Finance Docket No. 5470. Supplemental Application of Atlantic Coast Line Railroad Company Made in Connection with Acquisition of Control of Atlanta, Birmingham and Coast Railroad Company

To the Honorable Interstate Commerce Commission:

By its original application heretofore filed and given the docket number above, Atlantic Coast Line Railroad Company, applicant, requested authority under paragraph 2 of

section 5 of the interstate commerce act to acquire control of Atlanta, Birmingham and Coast Railroad Company, hereinafter called the New Company, by the purchase of the entire issue of common voting stock of said New Company when organized, for the purposes and in the manner in said application and in the application in Finance Docket No. 5454 set out; and, under section 20a of said act, to assume certain obligations as to the preferred stock to be issued by said New Company. Reference to said original application is hereby made.

Under date of October 26, 1926, the commission entered its order in Finance Docket No. 5454, and including Docket No. 5470, approving generally the plan of reorganization, the acquisition of control, the issuance of the common and preferred stock and the making of the guaranties by applicant, but withholding specific authority to the New Company to issue securities and to the applicant for the assumption of obligations until receipt by the commission of proof of the incorporation of the New Company accompanied by copy of its charter.

Since the date of the entry by the commission of its order of October 26, 1926, said New Company has become incorporated under the laws of the State of Georgia and has filed with this commission in said Finance Docket No. 5454 its application dated November 25, 1926. Reference to said application is here made.

As set out in its original application, applicant has agreed to enter into certain guaranties with respect to dividends on said preferred stock of the New Company and with respect to other payments to be made in the event of any liquidation, dissolution or winding up, voluntary or involuntary of the New Company, or in the event of any merger or consolidation of said New Company, or any transfer or conveyance, whether by operation of law or otherwise of all or of a substantial part of the property of said New Company while any of said preferred stock shall be outstanding. The terms of the said guaranty are as set out in an agreement of guaranty between applicant and the Chase National Bank of the city of New York, trustee, a copy of which agreement is filed herewith as a part of this application.

[fols. 533-588] Applicant respectfully states that its charter, the resolutions of its board of directors and the opinion

of counsel, filed with and referred to in its original application, justify the acquisition of control and the assumption of obligations as herein and in said original application proposed.

Wherefore, applicant prays that, as requested in this application and in the original application heretofore filed by it, it be given authority under said paragraph 2 of section 5 of the interstate commerce act, to acquire control of the New Company by the acquisition of the entire issue of 150,000 shares of its no-par common stock as described in its application dated November 25, 1926, above referred to, and authority, under section 20a of said act, to assume with respect to the preferred stock to be issued by said New Company the obligations set out in the agreement of guaranty, copy of which is herewith filed as aforesaid.

Respectfully submitted, Atlantic Coast Line Railroad Company, by Geo. B. Elliott, Vice President and General Counsel.

Wilmington, N. C., December 6, 1926.

STATE OF NORTH CAROLINA,
County of New Hanover:

Geo. B. Elliott, whose name is signed to the foregoing and hereto attached supplemental application of Atlantic Coast Line Railroad Company, hereby makes oath that he has knowledge of the things therein stated and that the same are true to the best of his knowledge, information and belief, and that he is duly authorized by Atlantic Coast Line Railroad Company to verify and file this application on its behalf.

Geo. B. Elliott.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this 6th day of December, 1926. B. B. Reynolds, Notary Public. My commission expires December 30, 1927. (Seal.)

[fol. 589] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25170

Accounting for Capital Items In Re ATLANTIC COAST LINE RAILROAD COMPANY and ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY

Narrative Statement of Evidence.

Room 1103, I. C. C. Building,
Washington, D. C.

Friday, June 10, 1932.

The above-entitled matter came on for hearing at 10 o'clock a. m., pursuant to notice.

Before: Examiner T. D. Walton.

APPEARANCES

Mr. R. C. Alston, Citizens & Southern Bank Building, Atlanta, Ga., appearing for the Atlantic Coast Line Railroad Company and the Atlanta, Birmingham & Coast Railroad Company.

Mr. John A. Hynds, First National Bank Building, Atlanta, Ga., General Counsel for the Atlanta, Birmingham & Coast Railroad Company and appearing for that company.

Mr. Carl H. Davis, Wilmington, N. C., General Attorney for the Atlantic Coast Line Railroad Company and appearing for that company, and the Atlanta, Birmingham & [fol. 590] Coast Railroad Company.

Mr. Robert E. Freer, 922 Hurley-Wright Building, Washington, D. C., appearing for the Bureau of Accounts of the Interstate Commerce Commission.

PROCEEDINGS

Examiner Walton: The Interstate Commerce Commission has set for hearing at this time and place Docket No. 25170, Accounting for Capital Items In re Atlantic Coast Line Railroad Company and Atlanta, Birmingham & Coast Railroad Company, being a matter of inquiry and investigation into and concerning the methods employed by the Atlantic Coast Line Railroad Company in accounting for

its investment in the capital stock of the Atlanta, Birmingham & Coast Railroad Company, and also concerning the methods employed by said Atlanta, Birmingham & Coast Railroad Company in accounting for its liability for capital stock issued by it and for its investment in road and equipment, such inquiry and investigation having been entered upon by the Interstate Commerce Commission of its own motion by order of March 26, 1932.

Will you enter your appearances, please, gentlemen, stating into the record also your addresses?

Mr. Davis: Mr. R. C. Alston, Citizens and Southern Bank Building, Atlanta, Ga.; Mr. J. A. Hynds, First National Bank Building, Atlanta, Ga.; and Carl H. Davis, Atlantic Coast Line Railroad Company, Wilmington, North Caro-
[fol. 591] lina. Mr. Hynds is General Counsel of the Atlanta, Birmingham & Coast. Mr. Alston is also counsel for that road, as well as being counsel for the Atlantic Coast Line Railroad Company, and I am general attorney of the Atlantic Coast Line Railroad Company.

Mr. Freer: R. E. Freer for the Bureau of Accounts of the Interstate Commerce Commission, 922 Hurley-Wright Building, Washington, D. C.

Examiner Walton: Are there any other appearances?

(No response.)

COLLOQUY

Examiner Walton: Let the record show, Mr. Reporter, that there is no response to the last question.

It does not occur to the Examiner that we need adhere to any precise mode of procedure, and if counsel for the Atlantic Coast Line and the Atlanta, Birmingham & Coast Railroad have a plan of procedure, we would be glad to hear from them.

Mr. Davis: The two matters involved here are separate and distinct. The Atlantic Coast Line Railroad Company was permitted by the Commission to acquire 150,000 shares of the no-par common stock of the Atlanta, Birmingham & Coast Railroad Company, that common stock having the voting power. The order of the Commission states that the Commission will inquire into and concerning the methods employed by the Atlantic Coast Line Railroad Company in accounting for its investment in the capital

stock of the Atlanta, Birmingham & Coast Railroad Company.

The Coast Line has here present its Vice President in [fol. 592] charge of Accounts and its Comptroller to give any light on this subject which is desired by the Commission. I understand that this Docket No. 25170 is a new docket number, not connected with any other docket. Of course the matter of the acquisition by the Atlanta, Birmingham & Coast of the property of the old Atlanta, Birmingham & Atlantic, and the matter of the acquisition of the control of the Atlanta, Birmingham & Coast by the Coast Line are covered in the Commission's dockets Nos. 5454 and 5470.

It is proper, so far as the Atlanta, Birmingham & Coast case is concerned to attempt to stipulate into this record by reference so much of the old Dockets Nos. 5454 and 5470 as is necessary for the consideration of what we consider to be the question here involved, to-wit, the value of the property acquired by the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927.

We will also introduce oral testimony dealing with this subject. As far as we are advised, this question of the value of the Atlanta, Birmingham & Coast as of that date is the only question here under consideration, inasmuch as when that value is determined, the amount to be set up under Rule 41, referred to in the condition, will be fixed.

Examiner Walton: Mr. Davis, you referred to a condition.

Mr. Davis: It is in the Commission's report of December, 1926.

Examiner Walton: Is that the condition which was imposed by the Commission in granting the application which [fol. 593] was dealt with in 117 I. C. C. 439?

Mr. Davis: My reference is page 489 (439). It is the report of the Commission of December 21, 1926, in Finance Docket No. 5454.

Examiner Walton: It was a supplemental report, was it not?

Mr. Davis: Yes, sir.

Examiner Walton: May I inquire, do you consider that one of the matters involved here is a determination of the meaning of that condition?

Mr. Davis: No, sir. Our position is that the meaning of that condition has been fixed by the decision of the three-judge court in a proceeding in which the Atlanta, Birmingham & Coast was plaintiff and the Interstate Commerce Commission and the United States of America, defendants. That decision was rendered on October 26, 1928.

Examiner Walton: Where is that case reported?

Mr. Alston: Record 220 of the Supreme Court.

Examiner Walton: Is that the case in 28 Federal, Second, at page 885?

Mr. Davis: I think so. I am not entirely certain as to that reference.

Examiner Walton: Entitled "Atlanta, Birmingham & Coast against the United States?"

Mr. Davis: I think so. There were two cases under that same title, decided by that Court. The case to which I am referring is the first of those cases, and I think you have [fol. 594] given the proper reference.

Examiner Walton: There is no question of repudiation of that condition involved here?

Mr. Davis: None in the world.

Examiner Walton: It is your contention, as we understand it, that you have complied with the condition?

Mr. Davis: Yes, sir, or that what we propose to set up on our books as investment in road and equipment will be a compliance.

Examiner Walton: Yes, sir. Is there anything to add, from either of the railroad companies?

Mr. Alston: Mr. Examiner, I would like to make our position clear of record on this point: We have been summoned to appear in a proceeding which has a docket number different from the case in which we have heretofore proceeded, and in which the findings of the Commission were made on this subject. Those docket numbers are 5454 and 5470. The docket number now given is 25170. We understand that the effect of that is to take away from this proceeding the evidence which was introduced in those cases or docket numbers.

We are also admonished by the order: "that the Commission on its own motion without formal pleading" would enter upon a proceeding or inquiry, etc., all of which is more fully set out in the order itself.

We regard such proceeding as contrary to the opinion of the United States District Court for the Northern District of Georgia, entered on October 26, 1928, three judges [fol. 595] sitting, and the order that Court entered on the same day.

The opinion and the order were entered in the case of the Atlanta, Birmingham & Coast Railroad Company, complainant, vs. The United States of America, defendant, in Equity No. 497. The opinion and order are reported on pages 220 through to 223 and the transcript of the record in the Supreme Court case, No. 88, of the October Term, 1930, entitled the United States of America and Interstate Commerce Commission, appellants, vs. Atlanta, Birmingham & Coast Railroad Company.

We think that these proceedings constitute a departure from that order and opinion, for the order of the Court directed that the supplemental application of the complainant—the complainant was the Atlanta, Birmingham & Coast Railroad Company—in which said order was entered by the Interstate Commerce Commission, stand for further hearing before said Commission.

This notice or order of the Commission, under which we are proceeding in Docket No. 25170, notifies us that we are to proceed without pleading. The order of the Court is that the supplemental application should stand for further hearing. The supplemental application was the one in which the Atlanta, Birmingham & Coast Railroad Company asked for certain directions, and constructions of a letter by Mr. Wylie of the Commission.

If we understand the proceedings now at hand, they mean that the Commission gets away from that. We also think that the matter for determination here is that which [fol. 596] was brought out by the Court in the above-mentioned case, where the Court said in its opinion, "The words of the order of December 21, 1926, were acted on by the parties and should have their fair operation. We think they required that the valuation of the stock and the offsetting entries as to the investment in road and equipment should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition by it."

The Court ended its opinion with the statement:

"We conclude it should be set aside, leaving the supplemental application of the Court (Coast Company) to stand for further hearing before the Commission in due course."

The word "it" refers to the order of the Commission which was complained of in this case.

We feel that the course to be pursued is the course stated by the Court, and we desire to enter our objection and our exception to the proceeding in this docket number, for that it gets away from the docket numbers and the cases and the records on which the cases have been tried, and for that it gets away from the pleading, whereas the Court directed that the case should proceed on certain stated pleadings, that is, the opening of the supplemental application filed by the Atlanta, Birmingham & Coast Railroad Company.

For those reasons we desire to enter our objection and exception to the proceedings now at hand. We also desire to make the record clear that in our judgment the only [fol. 597] need for determination by the Commission, in so far as the Atlanta, Birmingham & Coast Railroad Company is concerned, is the value of the property acquired by the Atlanta, Birmingham & Coast Railroad Company as of January 1, 1927.

Examiner Walton: The objection to the Commission's proceeding in this manner in Docket No. 25170 is overruled.

Mr. Alston: The statements which I have made in the record are on behalf of the Atlanta, Birmingham & Coast Railroad Company. The Atlantic Coast Line Railroad Company was not a party to the case in the United States District Court for the Northern District of Georgia, to which I have referred, nor was it a party to the supplemental bill filed in that case, and the ruling on which supplemental bill found its way to the Supreme Court of the United States in the case, the name and docket number of which I have heretofore given.

Mr. Examiner, is it necessary for us now to take an exception to the ruling, and make the record show the exception?

Examiner Walton: It would be well to take your exception of record.

Mr. Alston: The Atlanta, Birmingham & Coast Railroad Company respectfully excepts to the ruling of the Examiner as to proceeding under Docket No. 25170, which has just been made.

Examiner Walton: Mr. Davis indicated that he would endeavor to stipulate certain matter into the record from [fol. 598] the Commission's Finance Dockets Nos. 5454 and 5470, and also would introduce certain oral evidence. Before that is done, have you anything to say, Mr. Freer?

Mr. Freer: In line, Mr. Examiner, with the last statement of Mr. Alston of the Atlanta, Birmingham & Coast Railroad Company, it seemed important to me, since the Atlantic Coast Line is for the first time a party in this Docket No. 25170, that the matter first referred to by Mr. Davis, that is, the accounting of the Atlantic Coast Line, should perhaps occupy our first attention. This is my suggestion on the record for procedure, that we inquire as to the accounting of the Atlantic Coast Line Railroad Company, and if counsel for that company are prepared to tell us concerning that accounting on the record, well and good.

Examiner Walton: Is there any objection to that, Mr. Davis?

Mr. Davis: I do not know that there is any objection, except that the Atlantic Coast Line Railroad Company has never been advised as to any particular in which the Commission desires information. We have the Vice President in Charge of Accounts here, and I can put him on the stand and the Commission can examine him, if it wants to.

Examiner Walton: The order of the Commission, of course, calls attention to the fact that it is desirous of investigating the methods employed by the Atlantic Coast Line Railroad Company in this matter.

Mr. Davis: Yes, sir.

[fol. 599] Examiner Walton: That being new matter, of course, it might be just as well to take it up first, if you have no objection. In offering your witnesses, is it your idea that you would not examine them first yourself?

Mr. Davis: I had thought that the Commission would want to ask them some questions. The notice states that the Commission is going to enter into an inquiry as to the

method of accounting by the Coast Line, and I thought that that called for us to present here the Vice President in Charge of Accounts who should be in a position to answer the questions that the Commission desires to ask.

Examiner Walton: Of course I do not know whether Mr. Freer would rather take the witnesses first or not. You might indicate, Mr. Freer.

Mr. Freer: It seems to depend somewhat on what counsel's ideas are on the subject. I do not desire to force upon the Atlantic Coast Line the direction as to how they should handle the matter, at least not at this moment. I am anxious that we get the facts in the record, the facts pertaining to the accounting and the relationship between the companies, and the details of the transactions, how they have been accounted for from the inception of the negotiations between the Atlantic Coast Line and the parties representing the bondholders of the Old Atlanta, Birmingham & Atlantic Railway Company down to the present time.

That seems to me to be the chronological order, and also [fol. 600] being new matter, it seems to me to merit the first attention. That is what I had in mind in making my suggestion. Whichever way will most expedite the obtaining of the information, I think probably we could agree upon.

Mr. Davis: We are ready to tender Mr. Darden right now, if that is what you want.

Examiner Walton: I think that we might cover the ground more speedily if counsel for the Atlantic Coast Line Railroad Company would endeavor to show by this witness who has just been tendered the manner in which the Atlantic Coast Line has accounted for its investment in the capital stock of the Atlanta, Birmingham & Coast Railroad Company, inasmuch as he is, doubtless, more familiar with the details than *than* Mr. Freer. If, of course, Mr. Davis does not wish to do that, it may be that the only alternative is for Mr. Freer to take the witness in the first instance.

Mr. Davis: Mr. Examiner, I am afraid, maybe, from the impression that is had here that it is believed I am playing for position. The Atlanta Coast Line does not know what information the Commission wants. I will put Mr. Darden on the stand and ask him what the Coast Line has put on its books in this connection.

Examiner Walton: We would appreciate that, Mr. Davis, I think you are correct, that until this moment, when Mr. Freer spoke, you very likely have not been told what the Commission would like to have in the record in the way of [fol. 601] information from the Atlantic Coast Line. Mr. Freer did indicate that he would like to have the Atlantic Coast Line's manner of accounting made of record. He also indicated that he would like to have developed the relation between the Atlantic Coast Line and the Atlanta, Birmingham & Coast Railroad Company.. I invite you to develop both of those matters, if you will.

T. F. DARDEN thereupon was called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

I am Vice President of the Atlantic Coast Line Railroad Company and in charge of accounts. I understand that the Atlantic Coast Line Railroad Company owns, and has acquired under the authority of the Interstate Commerce Commission, the entire issue of voting stock of the Atlanta, Birmingham & Coast Railroad Company. Regarding whether the method of the Atlantic Coast Line Railroad Company has been any other than to set up on its books the amounts that it has paid in connection with the acquisition of that stock, or for which it is liable—that is all it has done, to put on the books the actual cash expended in connection with the acquisition of that stock. With reference to what actual amount of cash has been expended up to the present time in that connection—we have on our books an [fol. 602] actual cash expenditure at the present time of $3,997,477.41. There are items for which the Atlantic Coast Line Company is liable which have not yet been entered on its books. There is a determined item of around $250,810.17 which the Atlantic Coast Line has assumed and will pay in due course. I understand there are some indeterminate minor items that have not yet come to light, which will subsequently be paid when they come to light. Lap-over items and the items that will normally arise in the ordinary course of business. The method of accounting employed by the Atlantic Coast Line Railroad Company has

been to set up on its books the amounts which it paid in connection with the acquisition of that stock under its agreement with the Bondholders Committee of the Atlanta, Birmingham & Atlantic. It is the practice of the Accounting Department of the Atlantic Coast Line to set those amounts up on its books as and when they are paid.

Cross-examination:

I am not familiar with the transaction whereby the Atlantic Coast Line actually received the issue of common stock, the no-par stock, to which I have referred. I do not know whether I am qualified to testify as to that. I assume that they received the stock from the Bondholders Committee. It has 384 shares of preferred stock. With reference to when and from whom the Atlantic Coast Line acquired [fol. 603] those 384 shares—that is a matter of record with which I am not familiar. You can get that from the records. The Atlantic Coast Line is carrying the no-par common stock of the Coast Company in Account No. 727, I believe, Unadjusted Debit Account. That is an asset account. We consider that correct, for the reason that the definite amount that we will finally pay in connection with this stock has not been determined. I think the character of that account justifies that handling. I can not answer as to what date the Atlantic Coast Line acquired this entire issue of the voting no-par common stock of the Coast Company. It first appeared on our books from the day the first payment was made—I have not that date—and as payments were made, each year they were entered in this account. I have not got the date of the first payment. It is a matter of record which can be given to you. My understanding is that the amount of $3,997,477.41 was paid to the receiver of the Atlanta, Birmingham & Atlantic Railroad Company to liquidate the obligations the Atlantic Coast Line had assumed. I have no knowledge that this amount includes any payment to the preferred stockholders under the guarantee of the Atlantic Coast Line. I would have to analyze the account to determine that. The Atlantic Coast [fol. 604] Line has made payments under its guarantee of dividends. It has paid. It has not paid to the stockholders. It has paid to the trustee, the Chase National Bank, I believe it is, an amount under its guarantee. Our payments

began in June, 1928. We paid a net amount on that date of $128,547.50. In December, 1928 we paid the same amount; in June, 1929 the same amount; December 1929 the same amount; June 1930 the same amount; December, 1930 the same amount; June, 1931 the same amount; and December, 1931 the same amount. The gross amount paid in each of those periods was $129,507.50. I was giving you the net amount. That is the way the transaction was handled. The Coast Line made the payment of the gross amount to the trustee. The Coast Line being one of the stockholders, the trustee paid the Coast Line the amount of $960, that being an amount equal to a dividend on the stock. Regarding in what account we showed the payment of $129,507.50—we first carried that as a profit and loss item, but on instructions from the Accounting Department of the Commission we changed it and have subsequently carried that in income account, Account No. 551 — Miscellaneous Income Charges. To state in what account we carried the $960 received from [fol. 605] the trustee—I would have to look at the record to see how we handled that transaction. We carried it in Dividend Income Account No. 513. With reference to where we carry the 384 shares of preferred stock of the Coast Company held by the Atlantic Coast Line—we have no entry on our books for any of the transactions other than the $3,997,477.41. To the extent that the 384 shares are involved in there, I am not familiar. I do not know that the 384 shares of preferred stock are merged in with the common stock. I could not answer the question without examining the record. Regarding the item mentioned of $250,810.17 and to which account it is entered—that has not been paid by us and is not entered on our books. It will be entered on the books when it is paid. That covers unrefunded balance of equipment trust notes issued by the trustee of the Atlanta, Birmingham & Atlantic Railroad Company, less certain refunds to the Atlanta, Birmingham & Coast by a special master at the Atlanta, Birmingham & Atlantic foreclosure sale from $50,000 deposited by the Atlantic Coast Line Railroad Company with the special master to pay non-assenting bondholders. The amount of $250,810.17 is not on our books. It is not carried as a liability. The $250,810.17 is a liability we have, that we will assume. I have not the date here when we determined that the $250,810.17 was a real

liability. It has been in rather recent times, I should think, [fol. 606] but I have not the date of that here. It is our purpose to put it on our books. May I make this statement: There is no disagreement between us and the Accounting Department as to this fund. When the thing is finally determined, when the amount which we are going to pay in connection with this transaction, it is our purpose to put it where it properly belongs, in Account 706—Investment in Affiliated Companies. It is now carried in suspense. There is some correspondence with the Accounting Department in that connection, and we have stated to them what we are doing and why we are doing it. When I say "Accounting Department" I mean the Bureau of Accounts of the Commission. It is our purpose as soon as the actual cash outlay is determined to carry that total actual cash outlay in Account 706, divided between the two classes of stock in the affiliated company. I am not able to state from the figures I have before me the cost to the Atlantic Coast Line Railroad Company of the 384 shares of preferred stock. As to whether the amount of that cost was a liquidated amount at the time of the transaction—I am not familiar with that transaction. I could not answer that. I am not able to state why the 384 shares are not now carried to Account No. 706 without going into the record. I have not the information before me. Regarding whether there is on the books of the Atlantic Coast Line on amount of money referred [fol. 607] to as $4,080,699.80 in the old records in Finance Docket No. 5454 and in various Court records as the cash outlay of the Atlantic Coast Line—that was an estimate of Colonel B. L. Bugg as of January 10, 1927, for the liabilities that would have to be assumed eventually by the Atlantic Coast Line Railroad Company in connection with the transaction. Colonel Bugg is now president of the Atlanta, Birmingham & Coast Railroad Company, and was formerly receiver of the Atlanta, Birmingham & Atlantic. Of course, those estimates could not work out exactly. In the ordinary course of railroading there are lap-over items, personal injuries, loss and damage, and other indeterminate items, taxes, etc. This matter was an estimate of his, and the $3,000,000 odd is the way it has worked out up to the present time, and it will be four million two hundred thousand and some odd dollars when the amount is finally determined. Some of the items are approximately correct; most of them

are approximately correct. You can see that we are very close together for a long-time estimate. We have carried no amount to Account 727 except the actual cash paid, as [fol. 608] and when paid. $3,997,477.41 is the amount of cash actually paid to June 7, 1932, by the Atlantic Coast Line for obligations covered by the estimate of Colonel Bugg as of January 10, 1927. I would not say definitely that the $250,810.17 which we have recently determined to be a liability will not be carried to Account 727 until the cash is actually disbursed. If the Bureau of Accounts wishes us to take it up, we will do it. We have handled it that way, and it probably should go in the accounts as a liability. We would not object to carrying it as a liability, if the Bureau of Accounts desires us to do so. I approved the accounting performed by the Atlantic Coast Line for the common stock of the Atlanta, Birmingham & Coast, held by the Atlantic Coast Line. I understand that the Atlantic Coast Line was the owner of the entire issue of the voting no-par common stock of the Coast Company. I am testifying only as to accounting. I don't believe I could testify as to whether the Atlantic Coast Line votes that stock and exercises the control which it represents. If it owns it, I assume that it votes it. I am not an officer of the Coast Company, that is, of the Atlanta, Birmingham & Coast. As each entry was made in Account No. 727 on the asset side of the Coast Line's books cash was credited. I think that is Account 708. The amount credited to Account 708 and the amount charged to Account 727 would, of course, [fol. 609] balance, being the same transaction. It is a cash transaction entirely. I have not at any time exercised any supervisory control over the accounting of the Atlanta, Birmingham & Coast Railroad Company. I have been in on some of the deliberations in connection with the accounting. Mr. A. D. Daniels, Auditor, is the principal accounting officer of the Coast Company. Regarding whether I have any opinion as to why the 384 shares of preferred stock should not have been carried to Account 706 at the time the amount of cash which was paid for those 384 shares was expended by the Coast Line—I assume that there was one transaction there, and it would be treated together, and that in the final determination of the total cost to the Atlantic Coast Line of the common and preferred shares of stock purchased, it would be carried to the appropriate

account, No. 706, upon the final determination of the whole transaction. I should say, from the best information that I have, that within the next year all of the items will be cleared out and disposed of. Mr. Bugg probably can testify more definitely as to that than I can, but that is my understanding, that within the next year we will be able to determine the actual amount finally to be paid. No one can tell how long we will have to pay on the guarantee of dividends. I did not state that we had been carrying the amounts paid to Account 727 in the same manner that we carried the others. The guarantee payment has been carried in Account 551—Income Account, upon instructions [fol. 610] of the Bureau of Accounts. I was not in a position to advise the accounting by the Atlanta, Birmingham and Coast Company for the liability on that company's books for the no-par common stock. I concurred when the entry was made. I am generally familiar with the amount of liability proposed by the Coast Company. I do not know the exact figures. I am not competent to testify to the Atlanta, Birmingham & Coast accounts, it seems to me. I am not an officer of the Atlanta, Birmingham & Coast Railroad Company. My opinion was not given to anyone in particular that the accounting was correct, the Atlanta, Birmingham & Coast accounting. My opinion was not asked. I simply have been in conferences in connection with the accounting. Those conferences were with officers of the Atlanta, Birmingham & Coast Railroad Company, and the public accountants, Messrs. Haskins & Sells. I think I can name with what officers of the Atlanta, Birmingham & Coast. Colonel Bugg, the President; Mr. Daniels, the Auditor; Mr. Bell, the Assistant, Mr. Edwards, the valuation Engineer; and the Chief Engineer. I was not the sole representative of the Atlantic Coast Line present at these conferences. Mr. W. D. McCaig, the Comptroller of the Atlantic Coast Line, was also present. I only recall one conference that Mr. McCaig and I held with the officers of the Coast Company. It was held in Atlanta, Georgia March 22nd, 1932. I did not have any conferences with the officers of the Atlanta, Birmingham & Coast Railroad [fol. 611] Company at the time the first balance sheet of the Atlanta, Birmingham and Coast was made. My opinion was not sought concerning that balance sheet as I recall. I had nothing whatever to do with the initial set-up of the

balance sheet of the Atlanta, Birmingham & Coast Company, as I recall. That has been a number of years ago, but I do not recall that I had anything to do with it. (By Mr. Davis) About the 384 shares my recollection is that in the old Atlanta, Birmingham & Atlantic receivership there was some bondholders who did not assent to the plan. Of course, the bondholders were to get preferred stock in place of bonds. Certain of those bondholders did not assent. It, therefore, became necessary to provide funds with which to pay in cash, at a figure worked out in the foreclosure proceeding, about 50 odd cents on the dollar, to such of the bondholders as did not take preferred stock. Of course, the preferred stock which was allocated to those particular bondholders, upon payment by the Atlantic Coast Line of the amount that was necessary for the bondholders, that preferred stock came to the Coast Line, and it required some $34,000, if I remember rightly, to be paid by the Coast Line to get that stock. I can give you the exact figures. It is the difference between $50,000, which was deposited by the Coast Line, on the one hand, and $16,486.84, on the other. (The Witness) The difference is thirty-three odd thousand dollars. That amount was paid. $33,513.16 is what I make it. I accept the above statement of Mr. Davis. I have some of the details with reference [fol. 612] to the amount of $3,997,477.41 paid to the receiver of the Atlanta, Birmingham and Atlantic Railroad Company. I can give you, in a general way, what the amounts and the items were, but I do not have the names to whom they were paid. When I say certain items were paid to the receiver of the Atlanta, Birmingham & Atlantic Railroad Company I mean paid directly to him and/or for his account. I do not know the actual transaction, as to how the money was handled. The details of the items were:-Back taxes $501,291.71. Interest on back taxes $53,048.70. Material and Supplies $1,009,976.76. Note for the Birmingham Trust & Saving Company $116,904.48. Interest $4,490.52. Purchase of first and refunding 5 per cent bonds $384,325.93. Interest $18,884.22. Equipment trust notes $816,982.65. Note of B. L. Bugg, receiver, $235,311.96. Interest $8,823.19. Insurance $19.50. Equipment obligations $55,202.99. Interest $30,146.81. Receivership expenses $595,036.37. Miscellaneous expenses $16,379.82. Claims paid by receiver $120,651.80. Amount deposited

with reorganization committee to pay non-assenting bondholders $50,000.00. Total $3,997,477.41. There subsequently developed a credit against that last $50,000 item of $16,486.84, which will be adjusted when subsequent entry is made on the books. I referred to an item of $50,000.00 among the details of the $3,997,477.41 as the amount of cash to pay off non-assenting bondholders. The $50,000 [fol. 613] cash payment is the amount in No. 727. No adjustment has been made for the $16,486.84 credit. This adjustment will be made when we handle the two hundred and fifty thousand odd dollar item referred to as an assumed liability. It is involved in that. It will all be handled when the matter is taken over on our books, which will make the net amount thirty-three odd thousand dollars. I understand that in that amount of thirty three odd thousand dollars is the cost to the Atlantic Coast Line Company of the 384 shares of preferred stock. The item of liability of $250,810.17 is a net item, after deducting one $16,000 credit. So that the amount, as it now stands, of $3,997,477.41 should have a credit against it of some $16,000 and an additional debit also. There has been no cash yet paid. Heretofore we have carried that on a cash basis, cash actually paid. Regarding whether I read from Exhibit 2—I think I read from Exhibit No. 1. The amounts are practically the same. The item of $501,291.71 back taxes is from Exhibit No. 1. Interest on back taxes $53,048.70. Materials and supplies $1,009,976. That is from Exhibit No. 1. I might have read from Exhibit No. 2. I understand the amounts which appear in the column "Paid by A. C. L. to June 7, 1932," were paid to the receiver of the Atlanta, Birmingham & Atlantic Railroad on order of the Court, and in fulfillment of the contract of purchase. The figure of $267,297.01 in the next column of Exhibit No. 1 was [fol. 614] paid by the Atlanta, Birmingham & Coast to cover unrefunded balance of equipment notes issued by receiver of Atlanta, Birmingham and Atlantic Railway in the amount of $322,500 equipment notes issued by receiver of Atlanta, Birmingham and Atlantic Railway. That is $267,297.01. As to whom they were paid, I suppose it was to the holder of the notes. I don't know to whom they were paid. It is an obligation of the Atlantic Coast Line Railroad Company. It was part of the contract for the purchase of the stock, as I understand it. We assumed cer-

tain obligations of the receiver. As to whether the Atlanta, Birmingham and Coast acquired any equipment by reason of the payment of this amount of money—the equipment had already been purchased. There was no additional equipment. Either the receiver or the former corporation—I assume it was the receiver—purchased equipment under an equipment trust. These liabilities were outstanding when the road was taken over by the Atlanta, Birmingham and Coast and unmatured. And we were obligated to just assume those liabilities, among others. Regarding whether the title is passed when the balance of the liability is paid—I think that is a question of law. I assume that is right. The title does not pass eventually until the final payment is made. That is a matter for the law department to say. That is my understanding of the equipment trust. The other figure in the column paid by the A. B. & C. Railway is the red figure of $16,486.84, and the total, also in that column, is a net of $250,810.17, which is the figure that I [fol. 615] gave this morning as the liability which we expected to meet and carry to Account 727 in the asset accounts. The item of $50,000 in the column headed "Paid by A. C. L. Railroad Company to June 7, 1932," as it appears in both exhibits 1 and 2 was deposited with the reorganization committee to pay non-assenting bondholders. Just what date that deposit was made by the Atlantic Coast Line I am unable to state. I am not able to state the date of the receipt of that stock. Regarding from whom we received the 884 shares—I am not familiar with that transaction. I would have to go to the books to find out the date of the first payment. There is nothing on this statement to show it. It was some date early in 1926. I would have to get the books to state exactly. It was 1926 or 1927. We have to go to the books to get a transcript of the actual entry to see when the entry was first made on our books.

[fol. 616] J. E. Willoughby was thereupon called as a witness for and in behalf of the carriers and having been first duly sworn, testified as follows:

Direct examination:

My name is J. E. Willoughby. I am now the Chief Engineer of the Atlantic Coast Line Railroad Company and

have been since 1915. I made an examination in 1927 of the properties of the Atlanta, Birmingham and Coast Railroad Company. That was made at the request of Mr. Lyman Delano, Executive Vice President of the Atlantic Coast Line Railroad Company at that time. So far as I was interested in it, that examination was made for the purpose of determining the condition of the properties of the Atlanta, Birmingham & Coast at that time. With reference to the condition of the property as determined by me at that time—the physical condition of the roadway, track and bridges was such that no extraordinary expenditures for those items would have been required for the safe and economical handling of the traffic then existing or any reasonable increase thereof, except for rail and ballast. The buildings, including the station, shop, roadway and water supply structures, were not in good physical condition in that a part of the maintenance in those buildings had been deferred. These were defective roofs and floors and the cypress tubs showed some evidence of age. I ascertained what amount would be necessary to make good [fol. 617] the condition of the rail and of those buildings to which I referred. I estimated that the main line rail should be relaid over a spread of nine years, including 1927, which would require a total tonnage of 45,000. The cost of 45,000 tons of new rail f. o. b. Birmingham over the value of the salvaged rail that would be recovered I estimated to be $675,000. In order to lay the r[illegible] it would require other track material above the salvage [illegible]e of the released materials which I estimated to be $100,000, or a total for rail and other track material of $775,000 for 333 miles of main track. It was my thought then that 17,000 tons of the released rail would be needed in relaying 56-pound rail in the Waycross branch, in the Thomasville branch, and in the main line between Offerman and Thalman and in the Brunswick yard. Such a program involved the use of 17,000 tons of 80-pound released rail with the release of 12,000 tons of 56-pound rail, or a net of 5,000 tons of rails, which I estimated to be worth $140,000. The other track material I estimated to be $21,000, or a total of $161,000. The total of the main line and of the branches I estimated to be, for rail and track material, $936,000, spread over nine years. The buildings, in which I include different station, shop, roadway buildings and water supply buildings,

needed such repairs as could have been accomplished by an increase of the carpenter forces. I estimated that the number of carpenter forces required would be six and that the cost of labor and material for the six gangs would be $2,000 [fol. 618] per month, making the total cost of restoring the deferred maintenances of $144,000. Except for those items of rail and those buildings which I mentioned I found the condition of the property of the Atlanta, Birmingham and Coast normal. There was some ditching which was then in progress which was necessary to be finished in order to restore the fills to their standard width and in order to clean out the cut so that there would be a free flow of water from the cuts. I have not made any investigation relative to what would be proper unit prices to apply to the Atlanta, Birmingham and Coast but I have made an investigation as to what would be proper unit prices to apply to the Atlantic Coast Line Railroad in Georgia and Alabama in bringing the value of that road up to date as of December 31, 1927. Those figures are what we called the 1925 price level, assuming the same practice which the Bureau followed in determining the 1914 price level. Regarding what would have been the cost of reproducing the property of the Atlanta, Birmingham and Coast as of January 1, 1927, assuming those figures are proper to be applied—the studies on the Atlantic Coast Line Railroad for the states of Georgia and Alabama determined that the ratio of the 1925 price level to the 1914 price level would be 1.85 for the items in the engineering report and would be 1.59 for items in the land report. If we applied the same ratio to the report rendered by the Commission on the Atlanta, Birmingham & [fol. 619] Atlantic as of June 30, 1914, the reproduction cost new of the Atlanta, Birmingham and Coast on January 1, 1927, would be for items in the engineering report $32,341,195, and for items in the land report $1,988,365, a total of $34,329,560. That does not include the lands in non-carrier service. That includes the property which the Commission reported to the Atlanta, Birmingham & Atlantic Railroad and not the property, as I understand it, of the terminal company in Atlanta, The Alabama Terminal and the Georgia Terminal. It is exclusive of those. I mean one at Birmingham and one at Atlanta. There would have been a cost of reproduction new for equipment of $8,608,168, for general expenditures $4,211,751, for tele-

graph lines $158,388, a total of $12,978,307. In determining the value, that is, the reproductive value of the equipment as given above, I used the sums of money that were reported as the 1914 value in the I. C. C. report on the Atlanta, Birmingham & Atlantic and multiplied Account 51 by two, account 53 by 1.78, Account 54 by 1.69, Account 57 by 1.91, and for the telegraph line by 1.50. These factors were those that were introduced by the Bureau of valuation in the Richmond, Fredericksburg & Potomac recapture proceeding, Finance Docket No. 3898. For the general expenditures I used the same percentages that the Bureau of Valuation used in the 1914 value, that is, reproduction value, of the Atlanta, Birmingham & Atlantic. According [fol. 620] to my investigation there would have been a total of some $47,307,867 required to reproduce the properties which were covered in the valuation of the Atlanta, Birmingham & Atlantic Railway Company made by the Commission as of 1914, exclusive of the terminals referred to in that report, not including those items that have been added to the Atlanta, Birmingham & Atlantic since the valuation date under the Commission's Valuation Order 3. Except for the items to which I referred, it would not have been necessary to have made any capital expenditure or extraordinary maintenance in order to enable the Atlanta, Birmingham and Coast to handle the amount of traffic which had theretofore been handled, and which was reasonably to be expected. The examination which I made was sufficient for the purpose. It was sufficient to give me an idea of the condition of the property of the Atlanta, Birmingham and Coast. It was such an examination as I make from year to year of the tracks of the Atlantic Coast Line in preparing programs for the following year for the maintenance of the property. I testified that I made this investigation in 1927. I had made an examination of the Atlanta, Birmingham & Atlantic between Atlanta, Manchester and Birmingham in 1926. On the basis of that examination I made a report to Mr. Delano. I went over the Atlanta, Birmingham & Atlantic on their regular morning passenger train out of Atlanta and I consumed the day in [fol. 621] reaching Birmingham. I was in one of the inspection cars so as to obtain a view of the track as we passed over it. The Atlanta, Birmingham and Atlantic and the Atlanta, Birmingham and Coast traversed the South At-

lantic coastal plains to Montezuma. From Montezuma north and west the line is through a broken country which requires moderately heavy railway construction. Between Montezuma and Brunswick and the two branches the line is a surface road in the flat plain. The territory is similar for the State of Georgia. I mean for the Atlantic Coast Line in the State of Georgia. The Atlantic Coast Line in the State of Alabama has much less rock and much less sharp ridges than the Atlanta, Birmingham and Coast in Alabama or in Georgia west of Manchester. The construction towards Birmingham has more rock than the Atlantic Coast Line construction. The entire construction west of Montezuma was permanent railroad construction. There was no temporary expedients employed, except two or three wooden trestles. The railroad west of Montezuma was a high class construction.

Cross-examination:

I made the first inspection that I have detailed in September, 1926. Both inspections were made from an observation car. I had an observation car on the first inspection. I did not attempt to make any estimate of the cost of reproduction when I came back from that inspection. The purpose of the first inspection was simply to give me information with regard to a railroad which the Atlantic [fol. 622] Coast Line was contemplating purchasing. It was not made for any purpose except for my own information. I sought this information—the character of the road. And I found that the Atlanta, Birmingham & Atlantic tracks between Atlanta and Manchester and Manchester and Birmingham are safe for the traffic and speeds that then obtained on that railroad. It was evident then that there had been much improvement made in the condition of the tracks with regard to cross-ties in the last year or two in that additional creosoted cross-ties were being placed. The one feature of the track which then required some attention was the rail, because a part of the rail was surface bent and line bent. The purpose of the second inspection was to see the condition of the road which the Atlantic Coast Line had then purchased. With reference to my statement that the road was purchased—I mean the controlling stock. I mean the controlling stock

of the road which was purchased. I am not an officer of the Atlanta, Birmingham and Coast. I was not an official of the Atlanta, Birmingham & Coast when I made the second inspection. The next time I was on the road was on September 8th and 9th, 1929. The roadway was then in better condition than at the time the Atlantic Coast Line acquired the stock of the Atlanta, Birmingham and Coast, due to the extensive ditching that had been accomplished and due to the restoration of the fills, the cross-ties were in somewhat better condition due to the extensive placing [fol. 623] of cross-ties with tie-plates. The replacement of the rail that had then been affected was such as to take care of curve-worn rail. I can not say that that improvement was the result of my report. I advised Mr. Delano of the result of the inspection which I had made in September, 1929. I make it a habit for my own information to go over from time to time all railways in which the Atlantic Coast Line Railroad has a stock or other interest, and I keep Mr. Delano advised of my observations. This was merely one of those incidents. The last railroads that I examined in part was the part of the Louisville & Nashville Railroad, part of the Nashville, Chattanooga & St. Louis Railroad, and part of the Georgia Railroad. That was done in the first week of June of this year. The Atlantic Coast Line is interested in a great many more railroads than those I have named. I have also inspected the Columbia, Newberry & Laurens Railroad, the Charleston & Western Carolina Railroad, the Richmond, Fredericksburg & Potomac Railroad, and the Chicago, Indianapolis & Louisville Railroad. It has been several years since I was on the Clinchfield. I have made one inspection of that property. I inspected that while I was chief engineer of that railroad. I am no longer chief engineer of that road; but there is another engineer in the Atlantic Coast Line's employ who is chief engineer and who makes that inspec- [fol. 624] tion for the Atlantic Coast Line. He is under my direction, the principal assistant engineer. With reference to the Winston-Salem Terminal—if you mean the passenger terminal, I looked at that casually only. I did not have any regular program for these inspections; just whenever it happens to be convenient for me and in the

line of such other work as I may have. The opportunity the first week in June of going over the railroads named between Evansville, Ind., and Augusta, Ga., was because I happened to attend a technical meeting in Chicago and came back that way for that specific purpose of looking at the road. Whenever my business carries me over any road in which the Atlantic Coast Line has an interest through stock or otherwise, I look at it. But for the Atlanta, Birmingham and Coast, I have made an inspection trip over that road each two years since the purchase by the Atlantic Coast Line. The last inspection trip I made over the Atlanta, Birmingham and Coast was in 1931. Regarding my reference to the Bureau's valuation of the Atlanta, Birmingham and Atlantic—I can not tell you which Atlanta, Birmingham and Atlantic Company was valued. The report shows. The date of that valuation was June 30, 1914, as I understand it. I think that is the date of the valuation. I think the Winston-Salem Southbound or the A. B. & A. is probably the only railroad which has been inventoried as of [fol. 625] the 1914 price level. That report was decided in 1923, but the valuation date is June 30, 1914. I can not say that the equipment that was valued by the Bureau in 1914 was the equipment which was on the line in 1927. In bringing up to date the value of the Atlantic Coast Line for its system, which includes the States of Georgia and Florida, on which the Bureau of Valuation is now engaged, we had thought it necessary for us to work with the Commission, since they so invited us and since our interest lay in that direction, to ascertain the increased costs of lands on the Bureau's system of valuing railway properties. And our investigations for the States of Georgia and Alabama indicated that the increase in the value of lands on the Bureau system for the Atlantic Coast Line in the State of Georgia is 1.59. Not having made a study for the Atlanta, Birmingham and Coast, I used the same figures for the Atlanta, Birmingham and Coast because there was probably sufficient similarity in the two railroads in the two States to warrant the use of the factor that was determined for the Atlantic Coast Line in Alabama and Georgia. I applied the factors to the report as given by the Commission, June 30, 1914, the figures as a whole for engineering, except the general accounts and engineering itself. Accounts 1 to 47, applied to them as to 2 we applied 1.59. I applied the 1.85

[fol. 626] to the total of the road accounts 1 and 3 to 47, and I applied 1.59 to the Commission's valuation of land. With reference to the percentage as of June 30, 1914—we applied it to the report by the Commission on the Atlanta, Birmingham and Atlantic. That is 75 I. C. C. I will read from the Commission's report, 75 I. C. C. at page 699:

"Engineering has been estimated at 5 per cent upon road accounts numbers 3 to 47, inclusive. General expenditures have been allowed at 2 per cent on accounts numbers 3 to 47, inclusive.

"Interest at 6 per cent on one-half of construction period plus three months has been allowed upon accounts numbers 1 to 47, inclusive, except No. 2, Land, and upon Accounts Nos. 71 to 75, inclusive, and No. 77."

The engineering is one of the road accounts, and I used 5 per cent for engineering. The general expenditures consist of interest during construction, accounts 71 to 75 and 77. My engineering is included in the $32,341,195 which I gave, and my interest during construction is included with the general expenditures, $4,211,751. I did not make any effort to ascertain the equipment, that is, the number of locomotives, and whether or not they were the same locomotives. I just applied to the equipment in Account 51 as of 1914 the factor of 200. I spoke of unit prices. We made up unit prices for the Atlantic Coast Line for the States of [fol. 627] Georgia and Alabama. I did not make up unit prices for the Atlanta, Birmingham and Coast. Account 1 was not included in the $4,211,751. Account 1 was included in the $32,341,195. As to whether I applied the 1.85 to accounts 1 and 3 to 47 or applied it to 3 to 47 and added in No. 1—added in No. 1. But the result would be the same. Yes; the result would be the same. But we actually applied it by separating them and then adding it back. Regarding upon what I based the 1.85—that is a ratio of the 1925 price level on the Atlantic Coast Line in the States of Georgia and Alabama to the 1914 price level. The 1914 price level was the price level fixed by the Bureau. The 1925 price level was a price level which we had determined for the purpose of consulting with the Bureau when they are ready to serve notice on us of the results of their bringing up to date to December 31, 1927, of the value of the Atlantic Coast Line in the States of Georgia and Alabama.

The 1.85 is simply an incident. We determined the 1925 price level by exactly the same method the Bureau determined the 1914 price level, and it happened that having determined the 1925 price level after the Bureau's method for the 1914 price level that the 1925 price level was 1.85 higher than the 1914 price level for the States of Alabama and Georgia. The Bureau makes returns by States. But we determine the price level for each unit of property in every State, and the Bureau does likewise. Regarding [fol. 628] whether the Bureau applied in the initial valuation or basic valuation of the Atlantic Coast Line a different price for grading in Georgia than it did in Florida—I can not say as to Georgia and Florida, but it applied a different price in the State of Virginia than that in Georgia, and, if I recall correctly, there was more than one price applied for grading in Georgia. The Bureau did not apply a different price for tracklaying and surfacing in Georgia than in Virginia. We agreed with the Bureau for the 1917 valuation of the Atlantic Coast Line and accept the tracklaying and surfacing price, because under the Commission's accounting tracklaying and surfacing is an item which is an exception to the general rule of the accounting. I don't know from my own personal knowledge anything about whether the reorganization agreement had already been entered into at the time of my first inspection. I simply know the press reports showed the Atlantic Coast Line had gotten the road. Mr. Delano told me he was going over the road and wanted me to go with him, and naturally I went with him. This was in 1927. In 1926 the press reports had shown the Atlantic Coast Line was to acquire it, and my family was in Alabama and I went over to see them in Alabama. I had an opportunity of going from Atlanta to Birmingham over the Atlanta, Birmingham and Co-st. That was in September. It was before September 9th. It was on the Sunday before September 9, 1926. That was not [fol. 629] for the purpose of advising the Atlantic Coast Line how much they should pay for the property nor making any ascertainment of its worth. It was to see what the condition of the property was, to see what the physical condition of the property was. My inspection in 1927 or any subsequent inspection was not for the purpose of ascertaining the worth of the property. It was always to see what the physical condition of the property was at that time. As

to whether or not it is my intention to state that the value of that property was $47,307,867—it is my intention to say that the reproduction cost new of the Atlanta, Birmingham & Coast property for the units which were inventoried as of June 30, 1914, on the 1925 price level will aggregate $47,307,867. I am not prepared to say what the property is worth. I am prepared only to say what will be the cost of reproduction new of the property as of January 1, 1927. When I say of the property I mean of the units inventoried June 30, 1914, to which should be added these Valuation Order 3 improvements, and from which should be taken away all of the retirements. They would be retired under Valuation Order 3. I would say from 1927 to this date the property has been added to in value. Units of property have been added to. I am not able to express an opinion as to the period of time between 1914 and September, 1926. As to whether I would have recommended to the Atlantic Coast Line that they pay as much as $47,000,000 for the [fol. 630] property January 1, 1927,—I don't know what I would have recommended had that question been asked. I would have given the property itself an investigation and would not have used a factor that we developed on the Atlantic Coast Line, because whenever I am called upon for an opinion about a specific piece of property I go and examine that piece of property, calculate the units in that property, and determine the prices for that specific property. I have not been called upon in any instance to give such opinions. What I have been called upon to do was to give an opinion on the physical condition of the property, and the last opinion which I have recorded is on the 30th of August, 1931—"The condition of the property, except for rail, is good for a road of its class. I rather think that other than rail the maintenance is better than the earnings warrant." I have never been called upon in the past for such opinion as I referred to. On property which the Atlantic Coast Line contemplated purchasing I have. I was called upon for an opinion as to what the Montgomery Lumber Company railroad was worth. I made an examination of the property and an estimate of its value on its reproduction cost basis, and they paid the sum of money that I estimated. There have been no instances of that kind recently. In that case of the Montgomery Lumber Railroad I made an inventory and appraised that inventory, as of the time

[fol. 631] that the purchase was made. And I recall one other instance, the Everglades Railroad, which was purchased some three or four years ago. That purchase was not consummated until I had made an estimate of the cost of reproduction, and it was approximately upon the cost of reproduction new. In answer to Examiner Walton's question, regarding whether I have an opinion now as to the propriety from a practical railroad standpoint of expending $47,307,867 to reproduce the property of the Atlanta, Birmingham and Coast Railroad as of January 1, 1927,—I think if the Atlanta, Birmingham and Coast were not existent it ought to be reproduced substantially as it is and as an engineer I am tinctured with the idea that the value of a property is its reproduction cost. I can not say, without making a careful study, whether I would have recommended the expenditure of such a sum as that to reproduce the property at that time, if it had not existed. But what I do say is that as a general proposition if the road were nonexistent, it ought to be reproduced. And I say further that the railroad being reproduced the Atlantic Coast Line ought to own it. I will say that. The Atlantic Coast Line ought to own it because it ties up the Atlantic Coast Line into the City of Birmingham, and with its other interests in that city; and the city of Birmingham and the City of Atlanta are the two cities in the south that have promise before them. It also ties into Atlanta and Birmingham. In answering Examiner Walton's statement, I would want to [fol. 632] make a careful study of the advisability of expending this sum of money to reproduce the railroad as of the date mentioned in 1927 if it had not existed I do not mean by that that I personally have no opinion on the subject. Every engineer who looks at a piece of property knows how much better he could have located and built it if he had just had a chance at it. Now, I want that opportunity. In order to form this opinion I say it would be necessary for me to make a re-examination of the property, and that would possibly involve some economic conditions. I have some economic theories, in common with other engineers. In a general way only, I am familiar with the economic conditions which surrounded the Atlanta, Birmingham and Coast as of January 1, 1927. Regarding whether, based upon my knowledge as of that time, I am unwilling to hazard an opinion now as to whether I would

have recommended the expenditure of $47,000,000 to reproduce the railroad if it had not then existed—when you ask me to make a recommendation, a recommendation is a serious matter with an engineer. It is not offhand talk. An engineer has to have some basis for his recommendation. And I would not recommend the expenditure of one million dollars without making an investigation. But I say to you that on the Bureau's system of cost of reproduction the property on January 1st would have cost the $47,000,000 to reproduce new. And I say further that if the road was not in existence I would recommend to the Atlantic Coast Line Railroad that the general territory traversed by that road [fol. 633] is desirable for the Atlantic Coast Line to build into. Whether I would have recommended $47,000,000 or $50,000,000 or $40,000,000, I am unable to say because that would be just giving an offhand statement, and I am not prepared to do that. I have never done it.

Redirect examination:

When the Atlantic Coast Line filed with the Commission since the Transportation Act applications to construct additional lines of road I made the estimate of the cost of construction involved. Assuming that the property of the Atlanta, Birmingham and Atlantic Railroad which was valued by the Commission as of January 1, 1914, was worth the amount the Commission found as value; was the property acquired by the Atlanta, Birmingham and Coast January 1, 1927, worth more or less than that amount, I would say that the property is worth more for every purpose to which a railway can be put.

Recross-examination:

Regarding whether it was my intention by my last answer to express the opinion that the sale or exchange value of this property acquired by the Coast Company January 1, 1927, was in excess of the value placed upon the property of a predecessor company as of June 30, 1914,—I think undoubtedly it was worth more. I am not prepared to answer as to how much more it was worth without making [fol. 634] some specific examination, as indicated in my testimony previously. The road is worth more today than in 1914; that is, I mean it was worth more in 1922 than in 1914, because it was a better facility of transportation for

persons and property and a piece of property which could be maintained and operated at less cost. So there would be a less proportion of the earnings expended in the maintenance and operation of the property. It was better because of whatever development had taken place between 1914 and 1922, and it was better because lanes of traffic were being worked out. In fact, it was better in every point for which a railroad could be used. In using the date 1922 in two places in my answer I should have said 1927 over 1922. I should have said the property was worth more in 1927 than it was worth in 1922, and it was worth more in 1927 than it was in 1914, for every purpose to which the railroad would be put. I did not say I would have advised the Atlantic Coast Line, had my opinion been requested, to pay for that property at least the amount of the single sum value fixed upon it by the Commission. If my opinion had been asked as to how much to pay for that property I would have made an examination of that property and made a report thereon in answer to that specific question. I don't make reports offhand. I am willing to tell you that the [fol. 635] property of the Atlanta, Birmingham and Coast on January 1, 1927, was worth more than the physical property in 1922 or the physical property in 1914. As to whether my trouble is that I don't think the property of the Atlanta, Birmingham & Atlantic was worth the amount or value fixed upon it by the Commission as of 1914—I think it was too low in 1914. I don't think the Atlanta, Birmingham and Coast got a just value on the reproduction theory out of the Commission. I mean the Atlanta, Birmingham & Atlantic. The Atlanta, Birmingham & Atlantic did not get out of the Commission in its report in volume 75 I. C. C. what I believe to be the value of the property under the Act. So far as the value for bargain and sale, I have never been entrusted with the purchase of any property of that magnitude. I am unable to qualify as a man who buys and sells railroads. I am able to qualify as a man who builds railroads or estimates the costs thereof, because that has been my business for more than thirty years. I am not prepared to state what would have been a fair price in exchange for the property of the Atlanta, Birmingham and Atlantic as of June 30, 1914, because that has not been my training. My training has been in the construction and maintenance of railways and not in the buying and selling

of them. Whatever the exchange value was as of June 30, 1914, it was more in 1927 than in 1914. I would not go ahead and tell you what a railroad is worth on an exchange basis because that gets beyond my capacity. I know [fol. 636] it is worth more, because every feature that makes it worth more exists to a greater degree in 1927 than existed in 1914. The stability of the construction, as to whether it is permanent construction or temporary construction, the stability of the roadbed after construction with reference to subsidence and the contraction of the fills, the fitting of the railroad to the country which it serves, the development of the country which is served, the creation of and the development of lines of traffic, the relationship which exists between the railroad and the communities which it serves from knowledge and long association. All of those are elements in adding to the worth of a railroad property. I am familiar with the construction and maintenance of railways. I am not an operating officer. I am a construction and maintenance officer. I am not an accounting officer, but I know that a railroad that is well established in a community and fitted physically to the community is worth more than a railroad which has not been long established and which is not fitted or which has not fitted itself to the community. Those are physical facts which come within my jurisdiction. The question of operation does not. That comes under other branches of the service. I might feel I am qualified to express an opinion to this extent only, that the Atlanta, Birmingham & Coast is [fol. 637] worth more in 1927 than it was in 1922 or 1914 for every purpose to which a railroad can be put.

Redirect examination:

I do not remember whether the Interstate Commerce Commission in its report on the consolidation of railroads, 63 I. C. C., said "despite its history a very considerable value attaches to the Atlanta, Birmingham & Atlantic Railway. This arises from its relation to larger systems round about, particularly the Atlantic Coast Line and Louisville & Nashville." That was not a factor in its valuation any less important on January 1, 1927, than it was in previous years, 1914 or any other time. I think that factor of valuation had increased in its importance to this property and to the Atlantic Coast Line and Louisville & Nashville Rail-

road on January 1, 1927, over the previous years. With reference to the statement in the Commission's report of December 21, 1926, 117 ICC 181, at page 186: "Heretofore, however, its connections have been friendly. (Speaking of the connection of the Atlanta, Birmingham & Atlantic Railway with the Nashville, Chattanooga & St. Louis and the Louisville & Nashville). It has long been recognized that the lines of the A. B. & A. would be of particular value to the system of the Atlantic Coast Line in affording north-and-south connection between the lines of that system and those of its affiliated companies. In our consolidation plan, [fol. 638] 63 I. C. C. 455, the lines of the A. B. & A. were grouped with those of the Atlantic Coast Line, the Louisville & Nashville, and the Nashville, Chattanooga & St. Louis"—those roads are all parts of what the Commission had in mind as the Atlantic Coast Line system. That particular value which is referred to in this report continued up to January 1, 1927. The Louisville & Nashville operates about 5100 miles, but it controls many miles more. It operates under its own operation 5100 miles. It should have been about 5200 miles. It has control of and affiliation with the Nashville, Chattanooga & St. Louis. The Atlantic Coast Line and the Louisville & Nashville are joint lessees of the Georgia Railroad and through the Georgia Railroad lease they have an interest in the Western Railway of Alabama and an interest in the Atlanta & West Point Railroad. What I call the Georgia Railroad is part of the property of the Georgia Railroad & Banking Company. The Atlanta, Birmingham and Coast road, as we now know it, and the Atlanta, Birmingham & Atlantic Railroad Company's road that was referred to in these reports, connects with the Louisville & Nashville Railroad at Birmingham and at Atlanta. At Birmingham it operates into the same passenger station. I can not state how many miles of terminal property the Atlanta, Birmingham and Coast Railroad has in Birmingham. It again touches the Louisville and Nashville Railroad at At-[fol. 639] lanta. It crosses at Pelham, in Alabama. Pelham is twenty-odd miles from Birmingham. It also touches the Nashville, Chattanooga & St. Louis at Atlanta. It touches the Atlantic Coast Line at Brunswick, Ga., at Offerman, Ga., at Waycross, Ga., at Thomasville, Ga., and Tifton, Ga. The Atlantic Coast Line operates about 5200 miles under its own charter. About 2000 miles or a little over 2000 miles is in

Florida. I can not say how much is in Georgia. Possibly something approaching 700 miles. The Nashville, Chattanooga & St. Louis Railroad have 800 miles of main line and branches. The Georgia Railroad main line is 175 miles. Then they have branches to Athens and one or two other places in Georgia. The Atlanta & West Point and the Western Railway of Alabama is about 170 miles more. The Charleston & Western Carolina Railroad has 350 miles. The whole system of the Atlantic Coast Line, which includes all of the lines which I have mentioned, and probably some others, of smaller degree, has in it about fourteen thousand-odd miles of road. The connection with the Atlantic Coast Line and the Atlanta, Birmingham and Coast Railroad at Offerman and also at Waycross makes a direct through line up to Atlanta and to Birmingham and connecting at Atlanta with the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railroad, the Georgia Railroad, and the Atlanta & West Point Railroad, all of which are parts of the Atlantic Coast Line system, and which continue westward as far as the Louisville & Nashville Railroad goes, [fol. 640] and, of course, with connections indefinitely. In my judgment from the economic side of my engineering profession those facts give to this property an important value because of its affiliation with those other properties mentioned.

Recross-examination:

The cost of reproduction new, being one element of value, I am prepared to determine and testify what that sum will be. These other related values of the railroad as a machine for the transportation of property and as a machine connecting up other properties held under the same ownership, those items are items of value in the property. And those items of value are greater in 1927 than they were in 1914 or in 1922. In 1912, 1914 and 1922 the Atlantic Coast Line did not have any interest in the properties of the Atlanta, Birmingham & Atlantic except as a connection. The value that certain affiliations with other carriers imparted to the Atlanta, Birmingham and Coast was as of the first of January, 1927. The value of the Atlanta, Birmingham and Coast to the Atlantic Coast Line was on the first of January, 1927, after they acquired it, more than it was when it was an independent property. The affiliation before the Atlanta,

Birmingham and Coast acquired this property was not as close as now exists, but there was undoubtedly an affiliation, and I should think there was always the same value of the close affiliation, increased as the time changed. The values that I have been testifying to were, first, the reproduction [fol. 641] value—then you asked me these other questions—the geographical values, we might say, and relation to public values, and I gave you my opinion about that. But when I gave you my opinion about that I will say that my opinion is not as good as that of Colonel Bugg, the president of the road.

(Thereupon, at 4:30 o'clock P. M., an adjournment was taken until Saturday, June 11, 1932, at 10 o'clock A. M.)

[fol. 642] (The hearing was resumed at 10 o'clock a. m. Saturday, June 11, 1932.)

BURTON L. BELL was thereupon called as a witness in behalf of the carrier and, having been first duly sworn, testified as follows:

Direct examination:

My name is Burton L. Bell. I reside in the City of Atlanta, Fulton County, Georgia. I am Assistant Auditor of the Atlanta, Birmingham and Coast Railroad Company; its principal place of business is 26 Cain Street, N. W., in the city of Atlanta, Fulton County, Georgia; the Accounting Department as well as my office being located at that address. I have been engaged in railroad accounting work, in various capacities, for the past twenty years, having been connected with the present property since June 6, 1919. I was appointed to my present position January 1, 1927, upon organization of the Atlanta, Birmingham and Coast Railroad Company. Prior to June, 1919, and excluding my naval service during the world war, I was engaged in division accounting work on the Seaboard Air Line Railway. First, I want to state that the property of the Atlanta, Birmingham and Coast Railroad Company has been valued by the Interstate Commerce Commission, under section 19a of the Act, such valuation having been established as of June 30, 1914, and reported in 75 I. C. C. and Valua-

tion Docket #1. Said valuation was reported in the names of the Atlanta, Birmingham & Atlantic Railroad Company, the Georgia Terminal Company and the Alabama Terminal [fol. 643] Railroad Company; these three companies being in Receivership at Valuation date, were later sold and acquired by the Atlanta, Birmingham & Atlantic Railway Company, which Company was granted a charter August 10, 1914, under the laws of the State of Georgia. However, operation was not begun until January 1, 1916. The latter company operated the property until placed in receivership February 25, 1921, and operation continued under Receivership until December 31, 1926. The property was sold under decree of foreclosure in the United States District Court for the Northern District of Georgia and entered in the other Districts through which the railroad is laid, and was purchased by Messrs. Fowler and Roosevelt on behalf of the Reorganization Committee, and they conveyed the property to the Atlanta, Birmingham and Coast Railroad Company, newly organized under the laws of the State of Georgia, charter having been granted November 22, 1926, who assumed control of said property as of January 1, 1927. The Atlanta, Birmingham and Coast Railroad Company has about 640 miles of main line mileage, running from Brunswick, Glynn County, Georgia, to Sessoms, Georgia, thence to Waycross, Ware County, Georgia; Sessoms to Fitzgerald, Ben Hill County, Georgia, thence to Thomasville, Thomas County, Georgia; Fitzgerald to Manchester, Merriwether County, Georgia, thence to Atlanta, Fulton County, Georgia; Manchester to Birmingham, Jefferson County, Alabama, with terminals at those places named, and especially at Brunswick, Atlanta and Birmingham. As stated, the properties of the Atlanta, Birmingham [fol. 644] and Coast Railroad Company are the properties which were valued by the Interstate Commerce Commission and reported in 75 I. C. C. and Valuation Docket #1, decided July 20, 1923. The Atlanta, Birmingham and Coast Railroad Company desires to set up as its investment in road and equipment, Account 701, the Commission's Final Single Sum Value, reported individually for each of the three companies, as ascertained and reported in Valuation Docket #1, deducting therefrom the value given for the Ocilla Southern Railroad, the Alabama Northern Railroad and the section of track known as the "Mulga Branch"

in Alabama, adding thereto the additions and betterments, less retirements, for the period between valuation date, June 30th, 1914, and December 31st, 1926. The Net Final Value so ascertained being $22,832,107.00; the additions and betterments, less retirements, of $1,178,028.47, gives an aggregate value for Road and Equipment as of January 1, 1927, of $24,010,135.47. That this basis produces a value for the property of this Company used for common carrier purposes and is acknowledged in Section 19a of the Interstate Commerce Act and the amendments embraced in the Transportation Act, 1920, I desire to quote from the Commission's comments on Final Single Sum Value, Valuation Docket #1, pages 665 and 666: "The amendments of the act embraced in the transportation act, 1920, particularly those contained in section 15a of the Interstate Commerce Act, direct that the values so found be used in establishing rates that will yield to the carriers a fair return upon the aggregate value of the railroad property of such carriers [fol. 645] held for and used in the service of transportation. The value we are required to establish, therefore, is a value determined for the specific purposes of governmental regulation under the Interstate Commerce Act. That value must embrace all of the property used by the carrier for purposes of transportation, whether owned by it, or leased from others, and must include intangible value that inhere in the property because of its use. We are not concerned with a value for purposes of sale or of condemnation, which in either case might well be something different from the value of the same property for the purposes of governmental regulation—the conditions and considerations which are presented in sale or condemnation cases are not before us in this proceeding. The final single sum value which we have ascertained for the property of the carrier is based upon a careful consideration of all the relevant facts that have come to our attention. It is in our judgment a value which we are authorized by the valuation act to ascertain and report, and we have ascertained and now report it as the final value of the property of this carrier for rate making purposes. It is the fair value of the property which the carrier holds for and uses in the service of transportation and upon which it is entitled to earn a fair return." I submit copies of several balance sheets as reported to the Interstate Commerce Commission, dated

December 31, 1915, rendered by the companies whose properties now embrace the Atlanta, Birmingham and Coast Railroad Company; these are marked "B. L. Bell—#3, #4, etc., viz:

[fol. 646] #3—Atlanta, Birmingham & Atlantic Railroad Company, December 31, 1915.

#4—Georgia Terminal Company, December 31, 1915.

#5—Alabama Terminal Railroad Company, December 31, 1915.

#6—Atlanta, Birmingham & Atlantic Railway Company, Jan. 1st, & Dec. 31, 1916.

#7—Atlanta, Birmingham & Atlantic Railway Company, December 31, 1926.

It will be observed from Exhibits Nos. 3, 4 and 5 that the aggregate Investment in Road and Equipment at December 31, 1915, was

Atlanta, Birmingham & Atlantic Railroad Co.	$52,197,059.97
Georgia Terminal Company	4,831,113.06
Alabama Terminal Railroad Co.	5,791,226.98
Total investment in road and equipment	$62,819,400.01

and exhibit #6 shows that this property was set up in its Investment by the Atlanta, Birmingham & Atlantic Railway Company at January 1, 1916, as $38,760,149.87, being a reduction of $24,059,250.14. Although more than a million dollars has been added thereto in the meantime, the Atlanta, Birmingham and Coast Railroad Company desires to set up in its Investment account, as of January 1, 1927, this same property at a nominal value of $24,010,135.47, or approximately $40,000,000.00 less than recorded cost. The auditor of the Atlanta, Birmingham & Coast Railroad Company after January 1, 1927, had some correspondence with Mr. Alexander Wylie, Director, Bureau of Accounts, Inter-[fol. 647] state Commerce Commission. The Auditor of the Atlanta, Birmingham and Coast Railroad Company, after exchange of correspondence with the Director, Bureau of Accounts, Interstate Commerce Commission, did submit, on June 20, 1927 copies of proposed opening entries on the books of the Atlanta, Birmingham and Coast Railroad Compan-; Mr. Alexander Wylie, Director Bureau of

Accounts, replied on August 3, 1927, copy of which reply is submitted as Exhibit 8. Mr. Wylie stated in his reply: "The entries submitted are not acceptable in that the initial charge to Account 701, Investment in Road and Equipment, is based upon valuation (reproduction cost new) instead of cost." The Atlanta, Birmingham and Coast Railroad Company filed a supplemental petition with the Commission and is seeking relief from Mr. Wylie's letter or from the construction which the Commission through that letter placed upon its order of December 21, 1926, entered in Finance Docket 5454, reorganization and control of Atlanta, Birmingham and Atlantic Railway Company, reported in 117 I. C. C., beginning at page 439 and especially at page 442. The Commission denied the prayers of that petition in its order of April 9th, 1928, which is set out in paragraph 14 of the original bill filed by the Atlanta, Birmingham and Coast Railroad Company against the United States of America in the United States District Court for the Northern District of Georgia, Atlanta Division. Mr. Wylie, in his letter, refers to certain amounts paid out by the Atlantic Coast [fol. 648] Line Railroad Company in liquidation of current liabilities of the receiver, reorganization expenses, etc., and while recognizing the fact the Atlanta, Birmingham and Coast Railroad Campany did not receive one single penny of that money, nevertheless, directs that capital stock account be set on the basis taking the par value of the preferred stock, to wit: $5,180,300.00, and add to that figure to represent the value of the common no-par stock, the amount of $4,080,699.80, paid out by the Atlantic Coast Line Railroad Company, which will show capital stock liability at $9,260,999.80. On this basis, after considering other liabilities and assets, other than account 701, will leave an amount of $6,741,486.40 to represent the value of property devoted to the service of transportation or its investment in road and equipment, while the cost of such property is approximately forty million dollars in excess of the amount claimed as value by the Atlanta, Birmingham and Coast Railroad Company, using the Commission's final value as reported by the Interstate Commerce Commission in its valuation Docket #1, plus additions and betterments, less retirements, to January 1, 1927, producing a value of $24,010,135.47. Reference is made by the Commission in its order of December 21, 1926, to R. & E. account 41—Cost of

Road purchased. R. & E. me[illegible] Road and Equipment. This account is defined in the [illegible]mission's classification of Investment in Road and Equi[illegible]ent as follows:

"This account shall include the cash cost of any road [fol. 649] or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a curre[illegible] cash basis. If the consideration includes assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made.

This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the Commission. (Notes A and B to that account are omitted.)

Account 41 provides that—"Where the contract to purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities, and other assets, shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account."

If I took the Investment in Road and Equipment at $6,741,486.40, the figures set up by the Commission, and deduct [fol. 650] from that the value of the equipment, it would leave as the value for the road only $3,741,710.35.

The investment in equipment at December 31, 1926, was $4,306,660.73; the depreciation on equipment at that date was $1,306,884.68, leaving a net investment in equipment of $2,999,776.05; this latter sum to be subtracted from $6,741,486.40 leaves the amount for Investment in Road, namely, $3,741,710.35, and that figure, in the system of accounting proposed by the Commission, will represent the value of road, including all rights of way, buildings, gradings, cross ties, rails, switches, terminal properties, and every other thing which goes to make up what is called "the Road"; in fact, all of its property, except equipment. That figure does not even approximately, in my opinion, repre-

sent the value of the road property of the Atlanta, Birmingham and Coast Railroad Company; that company has 640 miles of main line, and using the Commisson's figure, will represent a value of only $5,846 per mile; the cost of the terminal properties in the cities of Atlanta, Birmingham and Brunswick would be in excess of the sum, which, under the Commission's plan, is intended to represent the value of all the Company's property except equipment. If I [fol. 651] wanted to show the fair value of the property of the Company, in preparing a case for the Interstate Commerce Commission or for a State Commission or for the Court, concerning what was a reasonable rate or schedule of rates, measured by either the "Reasonable and necessary investment" in the property for rendering service to the public, or on the basis of Reproduction Costs, Reproduction less depreciation, the books of the Atlanta, Birmingham and Coast Railroad Company would not only not be helpful but they would be very far from being helpful to the public or to the Commission or the Court or the Railroad Company. The first thing we would have to do, if we used such figures, would be to prove that our books were not true; that is, we would have to set aside the books. Supposing the law prohibits the Atlanta, Birmingham and Coast Railroad Company from "keeping any other kind of records of memoranda than those prescribed or approved by the Commission", the Atlanta, Birmingham and Coast Railroad Company could keep no books which would help it in making presentation of its case to a court or to the Interstate Commerce Commission or the State Commission, in any such case needing true investment figures. If the books were kept in accordance with Mr. Wylie's letter, Exhibit 8, the records of the Atlanta, Birmingham and Coast Railroad Company, thus kept would be very far from being in harmony with the records of the Interstate Commerce Commission. The books kept on the method proposed by the Atlanta, Birmingham and Coast Railroad Company would be [fol. 652] in exact harmony with the method of the Commission contained in its Valuation plan. In the matter of Depreciation, Section 20 (5) of the Act to Regulate Commerce contemplates that the Commission shall as soon as practicable prescribe for the carriers, subject to the Act, the class of property for which depreciation charges may properly be included under operating expenses, and the

percentage of depreciation that shall be charged. If the books of the Company were kept in accordance with the contention of the Commission, as shown in Mr. Wylie's letter, it seems to me that if depreciation was accrued on values suggested by the Commission, the figures would fall far short of reflecting actual depreciation of the property, and certainly far short of the amount of depreciation charges as is contemplated in the Commission's Depreciation Order No. 15100, finding 8 (page 454) and finding 3 (p. 431), 177 I. C. C. As an illustration, take a building erected just prior to 1927 which was constructed at a cost of $1,000; under the Commission's plan, I understand the value of the units of property would be scaled down proportionately to make up the total Investment in Road, as proposed by the Commission, which would result in depreciation being accrued on a value of approximately one-sixth or $166.67 instead of $1,000. In order to accrue the proper amount of depreciation, for the rates to be prescribed by the Commission, it would seem necessary to restore the building back to its real value of $1,000. If the valuation of the property [fol. 653] of the Atlanta, Birmingham and Coast Railroad Company was being ascertained by the Commission for the purpose of ascertaining "a fair return thereon" as provided in subsection 3 of 15a of the Act, the books of the Company, if kept according to the method proposed by the Commission, would be completely useless, either to the Company, to the Commission or to the public, for this purpose. If the Company asked that its property investment be given some value, either in a rate matter, recapture matter (15a) or a fair return matter, the account would then be accorded of no value, if the books were kept in the manner prescribed by the Commission. It is highly desirable that the Company's books reflect the value of the company's property for the purpose of putting on a mortgage loan, or the sale of securities (stock), and the books being kept as prescribed by the Commission could not be used for that purpose. In fact, I can not think of any use to which the books could be placed in any undertaking which required the correct status of the company's financial condition to be disclosed. The books, kept on such basis, would not correctly disclose the status of the company's affairs to the stockholders or creditors, in so far as the value of the property is concerned; that is, as the assets as of Company are

concerned. I want to reiterate that the Atlanta, Birmingham and Coast Railroad Company has not received one single dollar in cash for its issue of no-par common stock, simply the Special Master's deed to the properties, and under that circumstance, it appears paramount that that [fol. 654] part of Account 41 reading "Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis", be complied with. For its issues of preferred stock and its issues of common stock, the 150,000 shares of common stock, the Atlanta, Birmingham and Coast Railroad Company received only the Special Master's deed to the properties. It is my understanding that it received the title and the possession and the right of possession of the properties which were sold under the foreclosure proceedings and which had been formerly owned by the Atlanta, Birmingham and Atlantic Railway Company and the receivers thereof. There is not any doubt whatever about that.

Q. Let's go back to Mr. Wylie's letter of August 3, 1927, which has been offered as Exhibit No. 8. If I understand this letter, he took $4,080,690.80 as being the amount which the Atlantic Coast Line Railroad Company had paid out, and then he added to that the par value of the preferred stock, something in excess of $5,100,000; then he depreciated the $4,080,690.80 by $1,918,117.46. Will you please look at the balance sheet of December 31, 1926, which is your Exhibit No. 7, and note Account 775 under the general heading "Unadjusted Credits", that account being accrued depreciation—road. The amount is brought out as $611,232.78—and then account 776, Accrued Depreciation—Equipment, which is brought out as $1,306,884.68. The [fol. 655] aggregate of those two items is, as I make it, $1,918.117.46, which Mr. Wylie took off of the $4,080,690.80. Am I right about that?

A. That was the proposition at the time. And since we have amended our basis for investment, I assume that condition would not prevail now.

I understand Mr. Wylie's letter of August 3, 1927, is on that basis. Regarding the current assets in this statement and Account 701, Investment in Road and Equipment, $38,596,400.62, and regarding whether that is the valuation under which this depreciation aggregating $1,918,117.46

was taken—on part of that property it is, but that valuation of the road is the basis upon which the depreciation is taken. We do not account for depreciation on certain parts of railroad property. On such parts as are subject to depreciation included in that valuation of $38,596,400.62 we have introduced certain exhibits which show valuations of Account 701, covering this property in its various forms from and including the year 1915 and certain other years. Those are our Exhibits 3, 4, 5, 6 and 7. To my knowledge there has been no criticism of those sums set up in Account 701 over those years by the Interstate Commerce Commission. I believe the set-up in 1916 was approved by the Commission. Mr. E. L. Greene, who testified before the Commission in these cases and also before the court, died in 1929. Mr. Green was the auditor of the Atlanta, Birmingham and Coast Railroad Company and died December 3, 1929.

[fol. 656] Cross-examination:

I prepared to give this testimony in this case very soon after the receipt of this order. By that I mean very shortly after the receipt by our company of the order of the Commission dated March 26th, 1932. I am personally familiar with the matters contained in the testimony as I have given it here this morning. This testimony was prepared on my knowledge of the situation and with the assistance of Counsel, while I furnished the information. I furnished the phraseology. The exhibit which I have identified as Exhibit No. 3 is a balance sheet of the Atlanta, Birmingham and Atlantic Railroad Company. I obtained the figures on the exhibit identified as Exhibit No. 3 from the annual report to the Interstate Commerce Commission. The figures on Exhibit No. 6 are from the Atlanta, Birmingham & Atlantic Railway Company, a transcript of the balance sheet contained in the annual report to the Commission for the year ended December 31, 1916. The figures on Exhibit No. 7 are from a transcript of the annual report of the Atlanta, Birmingham & Atlantic Railway Company to the Interstate Commerce Commission for the year ended December 31, 1926. The amounts to which I referred on the liability side of that balance sheet, Exhibit No. 7, under unadjusted credits, and specifically in accounts 775 and 776, did not represent the accrued depreciation from January 1, 1916, to December 31,

1926, as it had been accumulated annually on the books of [fol. 657] the Atlanta, Birmingham & Atlantic Railway Company. The amounts so shown for depreciation represent the depreciation balances accrued on road property for the last three or four months of 1917, and commencing and continuing after March 1, 1920, through December 31, 1926. The depreciation on equipment is for the period as stated by you. The period that I except was the period of the Railroad Administration, and no depreciation on road was accrued during that period. The figure of $3,923,885.83 on the liability side of the balance sheet which is Exhibit No. 7 is the aggregate of the profit and loss account for the company, for the corporation and receivership from January 1, 1916 to December 31, 1926. On Exhibit No. 6, the liability side, Account 751, capital stock is shown as $30,000,000. That was $100 par stock. $30,000,000 par value capital stock was issued and outstanding at the commencement of business. I do not recall the exact details of reorganization as of January 1, 1916, except that I do know that the new company assumed the first mortgage bonds of the Atlanta & Birmingham Railway Company in the amount of $4,090. The funded debt outstanding and unmatured in the Atlanta, Birmingham Railway Company in the amount of $4,090,000. The funded debt outstanding and unmatured in the Atlanta, Birmingham & Atlantic Railroad Company, $9,255,786.78, was assumed and set up as its own obligation by the Atlanta, Birmingham & Atlantic Railway Company. As of the date January 1, 1916, the Atlanta, Birmingham & Atlantic Railway Company had an obligation for stocks of $30,000,000 and [fol. 658] an obligation on long term debt assumed of $9,255,786.78. The letter Exhibit No. 8 had reference to the balance sheet shown as Exhibit No. 7. Exhibit No. 7 is a balance sheet of the Atlanta, Birmingham & Atlantic Railway Company, not of the Atlanta, Birmingham & Coast. The original proposition was for the Atlanta, Birmingham & Coast Company to start off their balance sheet with items of accrued depreciation, road and equipment. The original proposition, so far as depreciation is concerned, was to perpetuate as if there had been no break in the chain of title, to perpetuate the old entries. The original proposal was to open our books showing on there accrued depreciation. It was as proposed by Mr. E. L. Greene, Auditor of the Atlanta, Birmingham & Coast Railroad Company. The orig-

inal of the letter offered as Exhibit No. 8 is in our custody. We have that original in our possession. I was not present at conferences concerning the initial or original entries as to the original proposal to be made upon the books of the Atlanta, Birmingham and Coast Railroad Company. Regarding when the next proposal came—as I recall, the management changed its contention for investment in the early part of 1929. The original set-up was on reproduction new. Being Assistant Auditor, Mr. Greene and I discussed the proposed accounting on numerous occasions. I also discussed it with a representative of Haskins and Sells. I have discussed it with a representative of the Atlantic Coast Line. [fol. 659] Haskins & Sells is a firm of certified public accountants in New York who periodically go over the accounts of the Atlantic Coast Line Railroad Company. To that extent they have some connection with the Coast Line. But they hold no position. They are certified public accountants. I discussed the manner of accounting by the Atlanta, Birmingham and Coast Railroad with Mr. Darden and Mr. McCaig. He is Comptroller with the Atlantic Coast Line. I discussed it with Mr. F. D. Lemmon, Assistant Secretary of the Atlantic Coast Line. Mr. Greene and I were employes of the Atlanta, Birmingham and Atlantic Railroad Company, and both Mr. Greene and I were employes of the receiver. Both of us became employes of the Atlanta, Birmingham and Coast Railroad Company.

Mr. Alston: Mr. Examiner, a question was asked Mr. Bell with reference to a balance sheet in which it was shown that the new company, the Atlanta, Birmingham & Atlantic Railway Company, had some $9,000,000 of funded indebtedness, and I would like to have Mr. Bell make a further answer on that, if he will. I think the answer as it stands is not quite as clear as the facts justify. Will yon please now go back to that question, Mr. Bell?

The Witness: As I understood the question, Mr. Alston, it was that the new company, that is, the Atlanta, Birmingham & Atlantic Railway Company, as of January 1, 1916, assumed $9,255,786.78 of the funded indebtedness of its predecessor. I answered yes to that question. I want to [fol. 660] change that answer to read that the new company did assume $4,090,000 of A. & B. first mortgage bonds.

Those bonds covered what we call the south part of this property, the part below Montezuma. And the new com-

pany issued about the time of its commencing business some income bonds, and the difference between those two figures represent the amount of income bonds outstanding. Those two aggregated $9,255,786.78 appearing in Exhibit No. 6 under Account 755, January 1, 1916. The Atlanta, Birmingham and Atlantic Railway Company was organized in the fall of 1914, but it did not take possession of this property until January 1, 1916. In the meantime, and in the fall of 1915, they issued the income bonds to which I referred. In referring to a railroad as the A. & B. I meant the Atlantic & Birmingham Railroad that owned the road from Montezuma, Ga., south. My correction of my prior statement would likewise correct my statement to a subsequent question asked Mr. Freer, but it would leave the total liability for capital stock and funded debt issued and assumed unchanged, that is, as of January 1, 1916, the Atlanta, Birmingham & Atlantic Railway Company had a liability, capital stock and funded debt, of $39,255,786.78.

Q. Exhibit No. 8 refers to Mr. Greene's letter of June 20, 1927, and the report prepared by Haskins & Sells. Were the entries submitted with Mr. Greene's letter of June 20, 1927, prepared by Haskins & Sells?

A. I cannot recall exactly that they were prepared exclusively by Haskins & Sells.

The Atlanta, Birmingham and Coast paid Haskins & Sells [fol. 661] for their work in connection with the Atlanta, Birmingham and Coast entries. I know that we vouchered the bill and paid it. I guess that is almost enough evidence. I have the letter dated January 27, 1927, from Mr. Greene to Mr. Wylie. Apparently that letter was written under a misapprehension of some of the conditions, as Mr. Greene expressed to me a different opinion at some subsequent date. This is the letter from Mr. E. L. Greene, Auditor of the Atlanta, Birmingham and Coast Railroad Company, dated January 27, 1927, File No. 56,000.

"Mr. Alexander Wylie, Director,
Bureau of Accounts,
Interstate Commerce Commission, Washington, D. C.

"Dear Sir:

"Referring to my letter of October 9th, 1926, regarding proposed opening entries for the books of the Atlanta,

Birmingham and Coast Railroad. You no doubt have received advice that this Company began operations as of January 1st, 1927, and have copy of Commission's Order under Finance Docket Nos. 5454 and 5470.

"As stated in my letter of October 9th, we would like to set up on our books for investment, cost of reproduction new June 30th, 1914, as determined by Bureau of Valuation, plus additions and betterments to December 31, 1926. The Commission's order states:

"Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transaction in the accounts, be reckoned on a basis not in excess of its par value; and [fol. 662] that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.'

"From this, I understand, that the value of the stock issued could not be included in the investment account in excess of some nine or ten million dollars, the definite amount not being determined until all transactions in connection with the re-organization have been completed.

"I will be glad if you can advise me if it will not be permissible to use the cost of reproduction as a basis for investment and carry the difference to profit and loss or to some suspense account.

"If you think we could reach a better understanding of the matter I would be glad to attend conference in your office if you will name a date agreeable to you, allowing me some ten days advance notice."

Mr. Wylie's reply of February 15, 1927, File Number 427757, reads:

"Mr. E. L. Greene,
Auditor, Atlanta, Birmingham and
Coast Railroad Company, Atlanta, Georgia.

"Dear Sir:

"Receipt is acknowledged of your letter of January 27th, file 56,000, relative to the opening entry for the books of the Atlanta, Birmingham and Coast Railroad Company to

record the acquisition of the property formerly owned by the Atlanta, Birmingham and Atlantic Railway Company, and requesting authority to include in Account 701, 'Investment in road and equipment' an amount equal to the cost [fol. 663] of reproduction new as of June 30, 1914, compiled by the engineering section of the Bureau of Valuation, plus additions and betterments to December 31, 1926, the date the property was acquired.

"Under the effective classifications of the Commission, property investment account must be stated on the basis of cost and not values. The stipulation in the order of the Commission dated December 21, 1926, in Finance Docket No. 5454, that the Atlanta, Birmingham & Coast Railroad Company in setting up its investment account shall not include therein any amount in excess of the par value of the preferred capital stock authorized to be issued and the amount actually received in consideration of the issuance of its no par common stock, must be adhered to literally.

"There is inclosed a copy of the tentative revised text of account, 'Railroad purchased.' Will you please advise whether you find any obstacle to embodying, in the proposed opening entries, the principles outlined in this tentative text, and if not, submit for review a statement of the entries which will be required in your case, to comply with these instructions."

I do not have information available showing who is the stock registrar of the Atlanta, Birmingham and Coast. The Secretary keeps the stock book. I have not seen that stock book. We are furnished advice from the Secretary that the common stock is issued and outstanding, as is reported in Schedule 109 of the annual report to the Commission. I can [fol. 664] give you the names of the holders of the common stock as of December 31, 1927. The record shows 149,995 shares are outstanding in the name of the Atlantic Coast Line Railroad Company, one share outstanding in the name of Mr. Lyman Delano, one share outstanding in the name of Mr. George B. Elliott, one share outstanding in the name of Mr. B. L. Bugg, one share outstanding in the name of J. L. Edwards, and one share outstanding in the name of R. C. Alston. The records show that these gentlemen just named constitute the board of directors of the Atlanta, Birmingham and Coast Railroad Company. I have taken the in-

formation that I have just given from the annual report to the Interstate Commerce Commission for the year 1927. The report for 1931 shows that the holding of that stock is approximately the same as shown in the 1927 report. Page 109 of the annual report of the Atlanta, Birmingham and Coast Railroad Company to the Interstate Commerce Commission for the year ended December 31, 1927, from which I read, indicates that these same parties whose names I have given owned these shares as of April 22nd, 1927, the date of the election of directors. Whether or not the ownership of those securities was different on January 1, 1927, can be shown by the records of the Secretary. I have the annual reports of the Atlanta, Birmingham and Atlantic Railway Company for the year 1916 and commencing with 1927 of the Coast Company. I would have to have my records before me before I could testify as to whether the operating [fol. 665] ratio from the return after Federal control down to the end of 1926, the ratio of expenses to revenues, ranged from 90.91 to 145.57 in the several years. As to whether the net income was a red figure for each of the years 1920 to 192[illegible] inclusive—I do not have the record with me.

Q. Mr. Bell, in your direct testimony you referred to the letter of Mr. Wylie which is Exhibit No. 8 and you stated in connection with that letter "On this basis, after considering other liabilities and assets, other than Account 701, will leave an amount of $6,741,486.40 to represent the value of property devoted to the service of transportation or its investment in road and equipment, while the cost of such property is approximately $40,000,000 in excess of the amount claimed as value by the Atlanta, Birmingham and Coast Railroad Company,—"

To what do you refer in using the word "cost"?

A. Recorded cost.

Q. You referred to the recorded cost on the books of the Atlanta, Birmingham & Atlantic Railway?

A. The Georgia Terminal Company and the Alabama Terminal Railway Company, the same properties as valued by the Commission and reported in Valuation Docket No. 1. The $62,819,400.01 total investment, road and equipment, as of December 31, 1915, represented recorded cost. I had nothing to do with those figures. I don't feel qualified to [fol. 666] answer whether I think the property of the At-

lanta, Birmingham & Atlantic Railroad Company, the Georgia Terminal Company and the Alabama Terminal Railway Company were worth $62,000,000, or practically $63,000,000, as of December 31, 1915. Personally I feel that the property is worth at least what the company is contending as a value for it. I am not an engineer; I am not a railroad operating officer, and I can only answer that from my own personal opinion that I think the property is really worth the $24,000,000 and some odd dollars that we are contending for. I have no opinion on that matter at all. I have an opinion as to its value as of January 1, 1927.

Q. In your direct testimony you stated, "If I took the investment in road and equipment at $6,751,486.40, the figure set up by the Commission, and deducted from that the value of the equipment, it would leave as the value for the road only $3,641,711.08". What do you refer to as the value of the equipment?

A. The appraised value as required under the text of account 41.

Q. Whose appraisal?

A. The Superintendent of Motive Power and the management.

Q. They made an appraised value of that property?

A. Yes, sir.

[fol. 667] Mr. A. W. Kirkland was superintendent of motive power. Taking the book cost less the accrued depreciation December 31, 1926, would leave what is usually referred to as the net depreciated value. Mr. Kirkland's appraisal was that the equipment was certainly worth not less than the net depreciated value. As I recall, his report to us was that after a physical examination the equipment was worth not less than the net depreciated value. When I say "worth" I mean its value. In discussing the value of the equipment with Mr. Kirkland it was his opinion that the equipment could be sold on January 1, 1927, at a figure approximating its net depreciated value. I haven't sufficient information to issue an opinion. Assuming that the equipment could have been sold for approximately $3,000,000, I conscientiously believe that the road property, the property other than equipment could have been sold for somewhere around $21,000,000, because the Coast Company has, in my opinion, some valuable terminal property, and certainly as a going concern it has some value.

Its geographical location, connections, etc., all tend to create a basis for value. It is my opinion that the property was reasonable worth for purchase and sale, other than the movable equipment, around $21,000,000 as of January 1, 1927.

Q. Are the figures of what you term net final value the same figures which you heretofore introduced in Finance Docket No. 5454?

A. There is a slight amendment in order to correct our basis to take care of certain corrections in the record [fol. 668] necessary which were developed by the valuation accountants under Valuation Order 3.

Q. Will you please explain how you assumed the Commission's final single sum value was arrived at so that you might correct it and bring it down to date?

Mr. Davis: Is it the purpose of the Commission to take advantage of the fact that it has not disclosed how it made its final value, or the Bureau?

Examiner Walton: It does not occur to the Examiner that that is necessarily implied in the question.

Mr. Davis: All right, then.

Examiner Walton: Counsel might indicate.

Mr. Davis: I thought it was certainly implied.

Mr. Freer: I wanted to see what assumption he had made.

Mr. Davis: It would, of course, have to be an assumption, since the Commission has itself never stated it.

Mr. Freer: He would have to assume what factors the Commission gave weight to in answering the question, I assume.

Mr. Davis: I submit we are not going to get very much of value in his making assumptions one way or the other.

Mr. Freer: It seems to me, Mr. Examiner, we have to get the assumptions that the witness made or we have no possible way of testing the figure.

Examiner Walton: You may proceed.

Mr. Freer: I am not testing whether his assumption had any foundation at all or questioning on that basis; I am trying to find out what assumption he made.

The Witness: I might answer that by saying that the [fol. 669] figure given there is arrived at in this way. There are certain figures enumerated by the Commission in Valuation Docket No. 1 for the three companies. Taking

those figures given under final single sum value as of June 30, 1914, and adding thereto the net of additions and betterments less retirements plus certain physical changes made but not recorded at December 31, 1926, will give the figure so shown.

By Examiner Walton:

Q. What figure?
A. $24,010,135.47.

By Mr. Freer:

Q. You start with a final single sum value which includes engineering, land, general expenditures and going concern value and adjust it by cost of property added and cost of property retired?
A. Yes, sir.
Q. Do you make any allowance for the fact that property is wearing out in the interim?
A. So far as that is concerned, I assume that the railroad property in order to continue in operation must be currently maintained.
Q. You assumed that there was no depreciation?
A. No, I did not say that.
Q. Then do you assume that the property had not decreased in worth?
A. Had not what?
Q. That the property had not decreased in worth, that the property value as of June 30, 1914, had not decreased in worth by reason of wear and tear and the action of the elements?
[fol. 670] A. I can see no reason why it should.

Mr. Davis: I take it you mean if properly maintained?
The Witness: If properly maintained.

By Mr. Freer:

Q. I presume this property was currently maintained up to the time of its acquisition by the Atlanta, Birmingham and Coast in 100 per cent operating efficiency?
A. As an accountant I do not feel qualified to answer that.
Q. However, did you not assume that in your calculation?

A. I did not assume 100 per cent. I assumed that it was properly maintained.

Q. What percent would you consider to be proper maintenance, if not 100 per cent?

A. My theory on maintenance is that taking the cross-tie put in, let us say, on January 1, 1927, on December 31, 1927, that tie does not have as much value as it had on January 1st. However, the remaining life, assuming it is ten years, one-tenth of its value has gone. You may have a lot of similar property in similar condition. When that property reaches nine-tenths of 100 per cent depreciated condition it is replaced. So under that theory I do not think you can say that any property is 100 per cent maintained.

Q. As to the rail that was in the track June 30, 1914, was that worth January 1, 1927, the amount you assumed the Commission to have included for rail in its final single sum value?

Mr. Davis: May I suggest, Mr. Examiner, this is argument and not cross-examination. We have stated here that [fol. 671] we took the value as found by the Commission and brought it up to date by additions and betterments net. Now then, this is nothing but argument as to whether that shows that: And it does not affect the fact as to what we did. That is admitted.

Examiner Walton: No; but it has something to do with the propriety of what was done.

Mr. Davis: As a matter of argument, possibly, but not as a matter of testimony.

Mr. Alston: The witness has not been put on here as qualified to express an opinion as to engineering matters.

Examiner Walton: It is the view of the Examiner that it is not unduly argumentative.

(Thereupon, at 1:05 o'clock p. m., an adjournment was taken until Wednesday, June 29, 1932, at 10 o'clock a. m.

[fol. 672] The hearing was continued in Hearing Room, I. C. C. Building, Washington, D. C., Monday, July 11, 1932, at 10.00 o'clock a. m., before Examiner T. D. Walton, with appearances as heretofore noted.

Burton L. Bell thereupon resumed the witness stand and, having been previously sworn, testified in behalf of the respondents as follows:

Cross-examination:

Answering the question "As to the rail that was in the track June 30, 1914, was that worth January 1, 1927, the amount you assumed the Commission to have included for rail in its final single sum value?"—my personal opinion is that the rail in the track January 1, 1927, was worth at least whatever amount the Commission may have allowed in its final single sum value plus any additions or betterments thereto to December 31, 1926. In the sum arrived at through our basis of breakdown of the amount allocated to road the value of rail as of January 1, 1927, appears approximately at $2,934,902.93. Regarding the basis upon which that figure of $2,934,902.93 is stated—in compliance with the text of Account 41, if our basis of valuation is approved we propose to submit to the Commission for approval a breakdown of the amount allocated to road and general expenditures of the amounts reported to the Bureau of valuation on B. V. Forms 588 at December 31, 1926, [fol. 673] scaled down to equal the present contention for value which is predicated upon the Commission's final single sum value for the three properties valued on June 30, 1914, that is, the Atlanta, Birmingham & Atlantic Railroad Company, the Georgia Terminal Company and the Alabama Terminal Railroad Company, scaled down to the amount so allocated to road and general expenditures. The first proposal of the carrier for setting up its investment in road and equipment was a cost of reproduction estimate as of January 1, 1927. That scaling down is accomplished by taking the amount reported to the Bureau of Valuation on Form B. V. 588 at December 31, 1926, the aggregate of charges to Accounts 1 to 45 and Accounts 71 to 77. Taking the amount reported to the Bureau of Valuation on Form B. V. 588 at December 31, 1926, the aggregate of charges to Accounts 1 to 45 and Accounts 71 to 77, scaling that amount down to the figure under the new basis allocated to Account 41, representing the cost of road and general expenditures. I desire to submit a statement which I think is in sufficient detail to indicate clearly how the amount of $24,010,135.47 is arrived at. (Respondent's Exhibit No. 9.) This paper is a statement giving reference to item numbers in the Commission's Valuation Docket No. 1 on the amounts used in arriving at our basis for investment, January 1, 1927. On the 4th page of this memorandum,

which is marked 2, you have the figure total value of carrier property at 12/31/26 $24,481,893.86. I am proposing to set up that figure now at $24,010,135.37; as indicated on the [fol. 674] first two sheets. The last two sheets are attached simply as a memorandum of our former figure. The sum is arrived at by the concluding figure on page 1 of $20,989,839.42 plus the figure representing investment in equipment on page 2 of $3,020,296.05, which will give you the aggregate investment of $24,010,135.47. The last two sheets are attached simply as memoranda only to indicate a change from the previous basis.

Q. Then, as I understand the explanation which is made, Mr. Bell, your process of arriving at the $24,010,135.47 was this; you take the valuation figures indicated on pages 684, 685, 697 and 689 of 75 I. C. C., as shown on the first sheet of your Exhibit No. 9, and add thereto net additions and betterments from June 30, 1914, to December 31, 1926, in road, equipment and general expenditures? Is that your first step?

A. Yes, Mr. Freer, that is the first step.

Q. You then subtracted from this figure as indicated on Exhibit No. 9, Mr. Bell, working capital? Is that correct?

A. That is correct.

Q. And then again subtracted some figure which purports to represent the depreciated value of equipment as shown on the books at December 31, 1926?

A. That is correct.

The net item of $492,278.39 represent certain retirements and certain additions that our valuation engineer accountant has recently developed that were actually made prior to December 31, 1926, but not recorded in the books prior to January 1, 1927. These items were discovered and it was felt proper that our contention for investment should be [fol. 675] reduced accordingly. With reference to the $610,163.97 shown as retirement adjustment—my recollection is that all those items represent property abandoned. As to whether there is no adjustment included in this sheet No. 1 for any depreciation on the additions and betterments—the amount so used I understand is the ledger value, that is, they have not been reduced by any depreciation.

Q. The amount labeled total carrier property June 30, 1914, $23,242,107, has not been reduced by any depreciation, has it?

A. I understand not.

Q. Now, Mr. Bell, turning to the second sheet of your statement which has been marked for identification as Respondent's Exhibit No. 9, do I understand that as to equipment the figures set up represent ledger value less depreciation accrued on equipment to December 31, 1926, as shown on the books?

A. That is correct. I assume you are referring to the $2,999,776.05?

Q. Yes, I was referring to that figure in my question, Mr. Bell. The figure of $39,921 next on the second sheet is not a depreciated figure, is it?

A. No, sir.

Q. It is ledger value?

A. Yes, sir.

Q. Do I understand that the figure of $2,999,776.05 was obtained by taking the total ledger value of all equipment in Accounts 51 to 57, both inclusive, and deducting there- [fol. 676] from the total depreciation set up on the books of the Atlanta, Birmingham & Atlantic Railway Company for such equivalent?

A. Including Account 58 in your question, that is correct.

Q. So that any depreciation accrued against the property represented by additions between January 1, 1916, and December 31, 1926, in any of these equipment accounts against which depreciation has been recorded would be included in the total deduction made from the ledger value of all equipment as of December 31, 1926.

A. The item of additions of $39,921 was not discovered until after January 1, 1927, and therefore there was not included in the accounts prior to January 1, 1927, any depreciation thereon.

Q. And the same thing is true of the $6297, is it not?

A. That is correct.

Q. Were these additions charged against income, or why were they not on the books?

A. Without having more information with me I cannot answer your question definitely.

Q. Going back to the value of rail as stated by you, $2,934,902.93, are we to understand that you took the estimated cost of reproduction new of rail as of January 1, 1927, as shown on the first proposed set-up of road and equipment for the Atlanta, Birmingham and Coast as ledger value of Account 9—Rail, and reduced it by some proportion which the figure of $24,000,000 bore to the first proposed investment in road and equipment total?

[fol. 677] A. In theory that is correct.

Q. That was done for each of the primary accounts?

A. That is correct.

Q. To bring them down in proportion as your total was less than the first proposal?

A. In theory that is correct.

Q. On transcript page 119, Mr. Bell, I asked you who paid Haskins & Sells for their work in connection with the Atlanta, Birmingham and Coast entries, referring to the entries as offered to the Commission by Mr. Greene for the proposed set-up of the road and equipment account of the Atlanta, Birmingham and Coast, and your answer was that it was the Atlanta, Birmingham and Coast. It has been suggested by your counsel this morning that you would like to correct that statement. Will you state whether or not you do desire to correct your answer as given on page 119 of the transcript?

A. I will adopt the explanation given by Mr. Davis, as I have since learned that the Atlantic Coast Line likewise made certain payments to Haskins & Sells.

Q. However, on page 119 of the transcript you stated: "I know that we vouchered the bill and paid it. I guess that is almost enough evidence." Do you now indicate that the same bill was paid twice?

A. I cannot say that it is the same bill, but we have paid Haskins & Sells an amount each year commencing with the year 1927, and in view of the fact that the last bill was much larger than the year previous I would assume that [fol. 678] it included compensation for services in connection with the opening entries.

Q. It was upon that assumption that you made the answers heretofore given on transcript page 119?

A. That is correct. And I desire to amend the answer as indicated as I have subsequently learned that the Atlantic Coast Line has paid Haskins & Sells certain amounts.

Q. For their services in proposing the opening entries for the Atlanta, Birmingham and Coast?

A. Yes, sir.

I have charge of the books of the Atlanta, Birmingham and Coast as assistant auditor. The books themselves only show the actual additions subsequent to January 1, 1927. No opening entry has yet been put on the books involving accounts 701 to 707, inclusive, or Account 751, capital stock liability. The amount of the preferred stock issued and outstanding is 51803 shares, with a par value of $5,180,300. In other words, the par value outstanding is $5,180,300. That checks with the amount reported on page 224 of the annual reports. As to the difference between that figure and the figure of $5,180,344.07 as used in certain of the computations in the exhibits in the old hearing—there is an item of $44.07 that came about in the exchange of the preferred stock for the bonds due to uneven amounts. That $44.07 will be disposed of when the open- [fol. 679] ing entry is spread on the books. As I recall, the item of $44.07 is still open on our books. I understand the situation to be that in the exchange of the preferred stock at $60.00 for every $100 of the bonds there had to be a payment in the aggregate over the 51803 shares of $44.07 to various bondholders to make it come out even. I have no knowledge of what the Atlantic Coast Line holds of the Atlanta, Birmingham and Coast preferred stock. With reference to exhibits 4, 5 and 6 showing certain stock and funded debt outstanding as of 1916 for the Georgia Terminal Company, the Alabama Terminal Railroad Company and the Atlanta, Birmingham and Atlantic Railway Company—no dividends were paid by any of those three companies on that stock to my knowledge. There was certain interest paid on the bonds, particularly by the Atlanta, Birmingham & Atlantic Railway Company. The annual reports of the Atlanta, Birmingham and Atlantic Railway Company would show what interest, if any, was paid. If I remember correctly, Schedule 261 M gives that information. There would be none paid not shown in the annual reports. No dividends have been paid by the Atlanta, Birmingham & Coast on the non-par stock. No dividend has been paid by the Atlanta, Birmingham and Coast on the preferred stock. With reference to the Atlanta, Birmingham & Atlantic Railroad Company being

a reorganized company—I think that information is disclosed in Valuation Docket No. 1, but I do not distinctly [fol. 680] recall the answer right now. The figures of $62,819,400.01 shown on page 94 represent the recorded cost of the properties on the books of the companies. That is the beginning and the end of my knowledge on that subject. The sum of $6,741,486.40 representing account 701—investment in road and equipment, is arrived at in this way: Taking the aggregate par value of the preferred stock of $5,180,300 plus the cash outlay by the Atlantic Coast Line of $4,080,699.80, less the net current assets brought over at the commencement of business of $2,698,817.73, leaves a net value of property of $6,562,182.07. It was subsequently decided that the Atlantic Coast Line would reimburse the Atlanta, Birmingham & Coast for certain vouchers audited prior to January 1, 1927, that were paid by the new company of $179,304.33, and that amount was taken out of Account 760, audited vouchers, and transferred to the cost of road, bringing that figure to $6,741,486.40. The figure $2,698,817.73 is the net of all other assets and liabilities. When I refer to all other assets and liabilities I do not include miscellaneous physical property. I exclude Accounts 701 to 707, inclusive, and Account 751. There is a registrar of the preferred stock of the Atlanta, Birmingham and Coast. I am not familiar as to the common stock. The National Bank of Commerce is the stock registrar. It is my understanding that that bank serves only as the registrar for the preferred stock. Several elements were taken into consideration in making the [fol. 681] answer on transcript pages 136 and 137 that I believed the property acquired by the Atlanta, Birmingham and Coast other than moveable equipment was reasonably worth for purchase and sale around $21,000,000. I believe you will recall that I hesitated expressing that opinion because I did not consider myself qualified to do so. However, it is reasonably expected that a railroad of 640 miles with necessary fixed facilities and equipment as a going concern certainly ought to be worth $21,000,000, especially where it had long established connections and the geographical arrangements, etc. I am not qualified to say whether any effort was made by the receiver to sell the property. I rest my opinion upon the fact that it was a going concern having 640 miles of railroad, its location,

etc., also being elements of consideration. Its location and physical connections have a most important part as to being able to earn its livelihood, and it certainly enters into the element of value. The location is valuable to the railroad in that it produces traffic. The traffic is important in that it produces earnings. The element of location and the element of going concern are reflected in the earnings of the railroad. Regarding my statement at page 100 about the effect upon the carrier in the matter of depreciation account in so far as that was influenced by the statement of the investment account—by that I mean that considering the Commission's Order 15100 I think one of the find-
[fol. 682] ings there recognizes that depreciation shall be accrued on the Commission's cost of reproduction new or actual cost, and where our unit costs represented in Account 701 are considerably less than the Commission's cost of reproduction new or actual cost, to my mind it will present several difficult problems in adequate depreciation accruals. I think the depreciation accruals would have to be independent of the amount stated in the investment account considering Order No. 15100. I do not expect the investment amounting to keep pace with the cost of reproduction estimates. What I meant by my testimony was that there was such a wide difference between the two bases, that is, our contention for investment and the Commission's proposal. Without giving the matter considerable thought, right off hand it occurs to me that it would present considerable difficulties by having an investment account so unreasonably low, that is, no- commensurate with the value of the property. I have prepared a balance sheet representing the figures which the Atlanta, Birmingham and Coast Railroad Company now proposes to set up as its opening entries on the books. (Respondent's Exhibit No. 10.) In answer to an inquiry as to what companies Exhibit No. 10 indicates investment in affiliated companies' notes and stocks I state that the Eastern Realty Company and the Atlantic Compress Company are the only two companies involved. The figures $74,680 for notes and $123,600 for stocks are the balances on the receiver's or corporate books at the close of business December 31, 1926, which were assumed by the new company or which [fol. 683] were brought over by the new company. Those notes were not paying interest. The stock of the Atlantic

Compress Company has paid dividends, but I do not recall just now whether there were any dividends involved subsequent to January 1, 1927. The amount for Account 705, Miscellaneous Physical property, $1,262,970 is the amount shown on the books of the Atlanta, Birmingham & Atlantic Railway Company or its receiver at the close of business December 31, 1926, and acquired by the new company, acquired by the Atlanta, Birmingham and Coast Company. That is the amount that was on the books. The two terminal companies were not involved after January 1, 1916. This account 727, Other Unadjusted Debits, $176,795.55, represent the aggregate of quite a number of current items such as freight revenue estimate for lapover items, passenger revenue estimate for lapover items, and quite a few other items which I can detail if you desire to know them. I think that represents debits on the accrual basis on the Atlanta, Birmingham & Atlantic Railway, the new company having assumed the current assets and liabilities of the receiver and the corporation—I will include both of them as they might be involved—and these items were simply brought over into the books of the new company. The Atlanta, Birmingham and Coast received not only the physical properties but any other assets of the Atlanta, Birmingham & Atlantic and/or the receiver. On the second sheet which has been marked for identification as Exhibit No. 10, in Account 751, I have set up the preferred stock of $5,180,300. That represents the par value issued and [fol. 684] outstanding. The common stock I have set up at $21,528,653,20. That amount is determined by taking our investment of $24,010,135.47, plus accounts 705 and 706, plus the other assets less the liabilities, which leaves an amount representing capital stock liability. From that amount deducting the par value of the preferred, will leave the amount to which you referred as representing the value of the common stock. I think my determination of Account 751 was a mere mathematical or mechanical determination, having determined our investment basis. That is the way all bookkeeping is done. With reference to who determined the $24,010,135.47 in account 701—as I understand the situation, the management determined the basis. The present figures are simply the carrying out of that indication. We determined it in the manner shown on our Exhibit marked for identification as Respondent's Exhibit

No. 9 after instructions had been given to do it in that way. Colonel Bugg, the president, instructed me.

Mr. Alston:

I will tell you how we got the $24,553,567.55 in Mr. Wylie's letter to Mr. E. L. Greene of August 3, 1927. It is the adding up of the asset side and the adding up of the liabilities side, except, of course, the common stock itself, and substracting the one from the other, and the figure comes out $24,553,567.55. In other words, it is another way of stating the profit and loss account.

The text of Account 751 would not indicate that the ledger value of the property determines the carrier's liability to its stockholders. Having in mind the provisions of Account 41, I think it is true that the value of the consideration given for the property should determine the ledger value of the property.

[fol. 685] Mr. Alston: Mr. Examiner, Item 11 in the proposed stipulation is as follows:

"Supplemental application of A. B. & C. Railroad Company for construction by the Commission of an order entered by the Commission in Finance Docket 5454 December 21, 1926, and Exhibits A. B. and C. thereto. Interstate Commerce Commission Finance Docket 5454 (R. 289-300)."

That latter figure represents the Supreme Court record. And that Supreme Court record 289 contains the Haskins & Sells balance sheet beginning at page 298, and it also contains Mr. Wylie's letter of August 3rd and Mr. Wylie's letter of July 1, 1927, to Mr. N. T. Lanigan, auditor, Georgia & Florida Railroad. Those are the exhibits, although they are not so marked. Well, they are so marked.

[fol. 686] J. L. Edwards thereupon was called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is J. L. Edwards. I live in Atlanta. I was Traffic Manager of the A. B. & C. Railroad from October, 1912, until July, 1918. After service with the Railroad Administration at Washington, I returned to this prop-

erty as Vice President in March, 1920; was named Assistant to the Receiver in 1921, and Vice President in January, 1927, which office I now hold. My service has been continuous since 1912, with the exception of the period with the Railroad Administration. I have been familiar with the traffic of this property and in a general way with the traffic of the railroads in the Southeast during that time. There was a large increase in industries in the territory served by the A. B. & C. between June 30, 1914, and January 1, 1927. There was, generally speaking, an increase in industries of many different kinds over the entire railroad. The principal industrial sections reached by our lines are at Atlanta and at Birmingham. On June 30, 1914, the only industries reached by our tracks at Atlanta were two wholesale grocery companies, one newspaper storage warehouse, a temporary storage yard for storage of iron and steel structural material, and a small warehouse for storage of calcium carbide. These industries produced annually, in and out, about 200 cars of freight, on which our revenue was estimated to be $10,000. On January 1, 1927, there were 28 industries reached by our tracks at Atlanta, [fol. 687] the principal ones being six bulk terminals for handling petroleum products, a feed and grain mill, a fertilizer manufacturing plant, and ten concerns, handling groceries and produce. In 1926 these 28 industries produced for us 3,602 cars of freight, on which our estimated revenue was $275,320. At Birmingham, on June 30, 1914, we had only a lumber yard and a local ice plant, producing annually about 100 cars of freight, estimated revenue of $5,000. On January 1, 1927, we had at Birmingham 16 industries served by our tracks, the principal ones being a large cement manufacturing plant, and a large creosoting plant, both of them completed in 1916, and four fruit and produce dealers. Including the cement and creosoting plants, a conservative estimate of the cars handled by us on a yearly basis, as of January 1, 1927, was 2,854, with a revenue of $93,825. The lines of the A. B. & C. constitute portions of through routes to and from Florida. With reference to giving a comparison of the amount of traffic to and from points in Florida handled by these lines as of June 30, 1914, and January 1, 1927—the figures can not be stated precisely, without going back to each waybill, because there is a small amount of interchange at the junc-

tions through which our business passes to and from Florida, other than Florida business, but we are able to estimate our revenue on business to and from Florida, with, we believe, a close approximation. We have esti- [fol. 688] mated that our revenue on freight which we handled in the year 1914 to and from Florida destinations, was $261,859, and in 1926 $1,170,132, an increase of $908,273. I have information indicating the growth in population and traffic of the State of Florida, comparing 1914 with 1926. The United States Census showed the population of Florida in 1910, 752,619, in 1920, 968,470, and in 1930, 1,468,211, an increase from 1910 to 1930 of 95 per cent. Those are the census dates. The value of manufactured products in the State of Florida in 1914 was $81,112,000, and in 1925, $267,009,000, an increase of 229 per cent. There are no figures available for 1926. The carload movement by rail of fruits and vegetables from the State of Florida, was as follows:

Season.	Total.
1913-1914	40,563
1914-1915	45,137
1915-1916	43,912
1916-1917	44,280
1917-1918	36,506
1918-1919	40,157
1919-1920	59,909
1920-1921	59,659
1921-1922	86,150
1922-1923	86,536
1923-1924	105,483
1924-1925	95,110
1925-1926	76,070

[fol. 689] Those are all carloads. The average for the first five years was 42,079 carloads, and for the last five was 85,870 carloads, showing an increase of 104 per cent. I have prepared and filed as Exhibit No. 11 a map showing the lines of the Atlantic Coast Line, and transportation lines in which it is interested to the extent of a half interest or more, by stock ownership, lease or otherwise, before the acquisition of the A. B. & C. Beginning at the South, the map shows how fully the Atlantic Coast Line serves the West Coast and central portion of the Peninsula of Florida,

as well as the P. & O. Steamship Lines to Key West and Havana, Cuba. The freight and passenger traffic on these lines, which amount to about 2,100 miles of railroad in the State of Florida, for the greater part moves through the gateways of Jacksonville and Waycross. This is particularly true of passenger traffic and northbound perishable traffic. Through traffic, freight and passenger, to and from points on the Florida East Coast Railway (which is not shown on this map) moves through Jacksonville. A large part of this traffic moves over the Atlantic Coast Line north of Jacksonville. Taking now the northern part of the System shown on this map, reaching Chicago, Cincinnati, Louisville, Evansville, Nashville, St. Louis and Memphis, and through these gateways the whole of the great Central West between Cleveland and Pittsburgh and the Mississippi River, and beyond, the direct line of the L. & N. from Cincinnati, with the line from Louisville, extends to Atlanta, [fol. 690] but not beyond. The line of the N. C. and St. L. from Memphis, Nashville and Chattanooga, extends to Atlanta, but not beyond. There is one route through Savannah, Yemassee, S. C., and Augusta, Georgia, to Atlanta, connecting with the L. & N. and N. C. & St. L. to the north and northwest there. There is also a route by Thomasville and Montgomery, Ala., connecting there with the L. & N. and West Point Route. I have prepared and now submit as Exhibit No. 12 a similar map of the Atlantic Coast Line, and transportation lines in which it is interested to the extent of one-half interest or more, by stock ownership, lease or otherwise, after the acquisition of the A. B. & C. Railroad. It shows the A. B. & C. as a direct connection between Atlanta and Birmingham on the North and West and Waycross, Tifton, Thomasville, Offerman, Hortense and Brunswick on the South. The mileage between Waycross and Atlanta, via Yemassee and Augusta, is 414 miles, via A. B. & C. 279 miles, a saving of 135 miles. Between Thomasville and Atlanta, the mileage via Montgomery, Alabama, is 387 miles, A. B. & C. 289 miles, a saving of 98 miles. These savings in mileage are, of course, reflected in the longer distances. For example, between Jacksonville and Atlanta, via Yemassee and Augusta, 470 miles, via Waycross and A. B. & C., 354 miles, saving 116 miles. The saving is the same between Jacksonville and Knoxville, and

Jacksonville and Cincinnati. Considering the increase in population in the territory served by the road, the large [fol. 691] increase in the number of industries served, the growth of Florida and Florida traffic, the physical condition of the line, the fact that no new railroad was built in the territory between those dates, and all the other factors entering into the question, it is my opinion that the properties now owned by the A. B. & C. Railroad Company, were worth far more on January 1, 1927, than on June 30, 1914, for every purpose for which a railroad is valuable.

Cross-examination:

I am the same J. L. Edwards who testified in Docket No. 5454 before this Commission. In my direct testimony I referred to the principal industrial sections reached by the Atlanta, Birmingham & Atlantic, and, of course, now reached by the Atlanta, Birmingham & Coast, as Atlanta and Birmingham. Both of those points are reached and served by other lines of railroad. That Atlantic Coast Line reached both of those points, either directly or through lines in which it owned more than 50 per cent of the stock, even prior to its acquisition of the stock of the Atlanta, Birmingham & Coast. In addition to the Atlantic Coast Line, Atlanta and Birmingham are served by other carriers. In stating that there was only a lumber yard and a local ice plant at Birmingham on June 30, 1914, I was including all rails, terminal companies and railroad companies. The same thing is true at Atlanta. I included in my 1914 figures industries located on the properties which were acquired by the Atlanta, Birmingham & Coast. These indus- [fol. 692] tries which were on the rails of the Atlanta, Birmingham & Coast on January 1, 1927, came into being in that period between 1914 and 1927. There was a gradual development. There was a good substantial increase in 1926. The only two industries that I recall that came into being in 1926 are at Birmingham, the cement plant and the creosoting plant. There might have been others in Atlanta. I am not sure. However, I do not think so. Those were started in 1926. The plants of these 28 industries in Atlanta were not served by other rails than those of the Atlanta, Birmingham & Coast. It was highly competitive traffic. We have reciprocal switching at Atlanta. Our estimated revenue stated in connection with the Atlanta indus-

tries was for the calendar year 1926. The same thing is not true of the industries at Birmingham, because the cement plant and creosoting plant were not established all of the year 1926. We took the portion of the year in which their shipments moved, and from that estimated what their annual traffic would be. My estimate is as of the calendar year 1926. It is so stated on a yearly basis. The actual revenue from the 28 industries is included in the earnings of the receiver for the year 1926 and the actual count of cars and the estimate of the revenue. The actual revenue produced from those cars entered into whatever net railway operating income or deficit the receiver had for the year [fol. 693] 1926. As to Birmingham, only a part of our estimated revenue entered into the deficit or income of the receiver. The percentage of the traffic of the Atlanta, Birmingham and Atlantic Railway Company that was local to the A. B. & A. varied from year to year. About one-fourth would be an approximate figure. About one-fourth originated and was delivered on our lines. About one-half of the total traffic was originated on the rails. About one-fourth of the total traffic was received from connections and delivered on the line, and the other fourth was received from connections and delivered to connections. Those figures are rough and will vary from year to year. I think those are approximate figures for the period of 1916 to 1926. I can not give you similar figures for the period subsequent to January 1, 1927. All of the departments of the A. B. and C. are under my control as Vice President, but I give particular attention to traffic and operating. Regarding what basis I estimated the revenue on freight handled by the A. B. & A. Railroad Company in the year 1914 to and from further destinations—as I stated in my testimony, at the junction points where our Florida business is interchanged, there is a small amount of business interchanged which does not go to points in Florida and is not from points in Florida. We estimate that from the proportion of Florida business and other business by taking a comparatively short period or periods and making per cents. I am unable to tell you at this time what period in 1914 I took. It was representative. [fol. 694] We wanted it for our own information, and we wanted it as accurate as possible. The rails of the A. B. & A. Railroad did not reach Florida, and any traffic from Florida toward the North received by the A. B. & A. came from

some connection. It came from three connections; from the Atlantic Coast Line, the Seaboard Air Line and the Southern Railway. There was considerable traffic originated on the A. B. & A. Railroad destined to points in Florida, originating at industries along the A. B. & A. I have no estimate with me of the revenue on freight handled by the A. B. & C. destined to and from Florida destinations since 1926. I have made them. It is probably a decrease over 1926. It is now a considerable decrease. The season for the movement of carload fruits and vegetables in the State of Florida runs from either July 1st or August 1st. There is practically no movement over our line in that month, so that I am not sure when it is. It is from mid-summer to mid-summer. I have not the figures for the mid-summer of 1926 to mid-summer of 1927. I do not know whether they continued to show a large decline, as indicated for the seasons 1924-1925 and 1925-1926, below the season 1923-1924. The citrus fruit is shipped largely according to the production. As to vegetables, the acreage may vary from year to year, but the orchards of citrus fruit produce each year, and the growers endeavor to market it. [fol. 695] During the Florida boom there was talk of considerable orchard lands platted and sold as lots. I know very little that that happened to. I have no information otherwise than that the acreage in Florida devoted to the production of fruits and vegetables was as large subsequent to 1924 as it was in 1924. During the first part of the period January 1, 1916, to December 31st, 1926, there was probably some net gain, you might say net revenue, produced by passenger traffic of the A. B. & A. Railway. There was a continual dwindling. It was very small, if any. I doubt if there was an actual loss in the operation of our passenger service during the latter part of that period, because we reduced our passenger service. During the period 1916 to 1926 inclusive two trains each way each day were operated by the A. B. & A. Railway between the termini, Brunswick and Atlanta and Birmingham, and during a short part of that period there was a third train, I think, operated between Fitzgerald and Atlanta. That was only a short part of the whole period, a year maybe. The first two trains that I mentioned operated from 1916 to 1927. It is hard to remember the dates on which those trains were discontinued. We discontinued in 1920, if I am not mis-

taken, two of the trains between Thomasville and Fitzgerald, and two of the trains between Brunswick and Nicholls. That left one passenger train, one train each way a day, operating between those two places. On the line between Birmingham and Manchester, at a date, probably 1924 or 1925, we changed one of the passenger trains, [fol. 696] that is, one in each direction, from a passenger train to a mixed train. The passenger revenue of the Atlanta, Birmingham and Coast in 1927 was $424,528; in 1928—$338,542; in 1929—$269,482; in 1930—$204,063; and in 1931—$120,467. Those figures were less than the passenger traffic for the period of the receivership. I have stated in my direct testimony that there is one route through Savannah, Yemassee, S. C., and Augusta, Ga., to Atlanta. I did not intend by that statement to limit that as the only route to the north. There are other routes to the north and west, through connections with the A. B. & C., over the Atlantic Coast Line proper. Both exhibits 11 and 12 embrace the route to the north through Augusta and via the Clinchfield—the map so shows—which reaches the same territory described as being served to the north and west in connection with my description of Exhibit No. 12 through Atlanta and Chattanooga. I should have shown Yemassee, S. C. on this map. It is the junction point between Savannah and Augusta. It is the first intersection of the red lines shown north of Savannah. Speaking of a route to the north and west, there was also a route through Montgomery and Birmingham. I referred to that. There is considerable business from Florida to Birmingham. There is also some traffic through Birmingham to points in Tennessee and the northern part of Alabama. The L. and N. does not extend south through Birmingham and Montgomery. [fol. 697] That is the Atlanta & West Point and Western Railway, from Atlanta to Montgomery. The L. & N. does not operate over that line. It is one of the roads in which the Atlantic Coast Line has a controlling interest, at least 50 per cent. As to what the southern terminus of the Louisville & Nashville is—the line from Cincinnati to Atlanta ends at Atlanta. The line through Nashville and Birmingham and Montgomery ends at New Orleans. There was a route, a considerably longer route, from the north through Montgomery and Birmingham via the Louisville & Nashville. When I say it is a considerably longer route I do

not mean to tell you that it is longer as to all points in Florida reached by the Coast Line to the north and west. I had in mind ony such traffic as came through Waycross, obviously a shorter route as to some part of the traffic. It would not be the important Florida traffic. Citrus fruit does not move by the route through Thomasville, Montgomery and Birmingham. It is practically all, I think, citrus fruit and vegetables, shipped anticipating diversion. The diverting points are Jacksonville and Waycross. There may be some direct shipments through Thomasville and Montgomery, but it is a very small fraction of the business moving. I assume that the Atlantic Coast Line extends the same privilege of diversion on traffic moving Thomasville, but, as a practical matter it does not move to Thomasville. It moves to Waycross. I mean the past season. On Tampa to Birmingham the short line is through Montgomery, [fol. 698] through Thomasville and Montgomery. The same thing is true of St. Petersburg. I have figures concerning the mileage between Jacksonville and Nashville through Montgomery and Birmingham, and the mileage from Jacksonville to Nashville through Waycross and Atlanta, using in the latter instance the rails of the Atlanta, Birmingham & Coast. Jacksonville to Nashville, via Montgomery and the Louisville & Nashville, is 692 miles. Jacksonville to Nashville via Waycross, A. B & C. and N. C. & St. L. is 643 miles, a saving of 49 miles via the Atlanta, Birmingham & Coast. I can tell you about the A. B. & C., that it is a one per cent compensated grade. I can not tell you about the N. C. & St. L. I mean the maximum grade is one per cent compensated. I can not tell you about the Louisville & Nashville. That is the main line of the Louisville & Nashville from Nashville down through Birmingham and Montgomery to New Orleans. I do not know about the grades between Tampa and Jacksonville and between Tampa and Thomasville on the Coast Line except the general nature of the country is level, comparatively level. There might be some hills in there. The country generally is level. Regarding what bearing the facts I stated I considered as a background for my expression as to the increase or decrease in vaue of the A. B. & C property would have on the value in connection with the fact that no new railroad was built in the territory between those dates—a new railroad would [fol. 699] divide business. The fact that no new railroad

was built would lead me to believe that the existing one was more valuable. I would not have advised any other railroad to have entered that territory. There was not enough business there to support one railroad. I did not want another railroad in the territory. Regarding what, in my opinion, the market or exchange value of the Atlanta, Birmingham & Atlantic Railroad was on June 30, 1914,—I have pointed out on one map the gap between the important Florida lines of the Atlantic Coast Line and their northern lines, extending to Atlanta, and to some extent to Birmingham. I have shown by another map that the A. B. & A. Railway bridged the gap exactly. It became, or was capable of becoming, the link connecting these two parts of the Atlantic Coast Line System. I have shown that the A. B. & A. was a line between important traffic territories, traffic producing territories and traffic consuming territories, considerably shorter than existing lines of the Atlantic Coast Line. I agree with the testimony of Mr. Willoughby that if the A. B. & A. had not been built, that, in my opinion, the Atlantic Coast Line could have built a railroad substantially located geographically where the A. B. & A. was located. It is my understanding that the reproduction cost of the A. B. & A. was in excess of $40,000,000. These facts, and the facts which I testified to in my direct testimony as to the increase in population, the increase in number of industries located on the railroad, the growth of Florida, [fol. 700] and the Florida traffic, the physical condition of the line, the fact that no new railroad was built in the territory,—all these facts led me to the conclusion that the market or exchange value of the railroad on December 31st, 1926 or January 1st, 1927 was in excess of the amount which we are asking to set up on the books as the value of the property. In making my comparison I was saying that the railroad was in part, but not wholly, more valuable on January 1, 1927, than on June 30, 1914, looking at it from the standpoint of its value to the Atlantic Coast Line as a connecting link. The road has not produced net railway operating income since January 1, 1927. For the period January 1, 1916, to December 31, 1926, leaving out the period of Federal control, I calculate that we were in the red on net railway operating income $883,999. Regarding my statement that if the A. B. & A. rails had not been there for

the Atlantic Coast Line to obtain, that I think the Atlantic Coast Line should have built a railroad approximately in the location of the A. B. & A., and regarding what my opinion would be as to how much they would have been justified in expanding in producing such a line—the usual cost of such a railroad. I suppose it would have been about $40,000,000. I believe that the Atlantic Coast Line would have been justified in spending at least $40,000,000 to produce a line between Waycross and Birmingham and Atlanta and Thomasville. I base that opinion on the fact that there was a very patent gap of their railroad system between [fol. 701] Florida, where such a large fraction of their tonnage was produced or consumed, and those important lines which came down to Atlanta and to some extent to Birmingham. The Atlantic Coast Line got no additional business out of Florida by reason of the addition of the rails of the A. B. & C. to its system that I know of. The Coast Line got no additional revenue by reason of its acquisition of the rails of the A. B. & A., if the A. B. & C. earned it. I would not say that they did not earn it, because there was some business which we could influence with respect to the Atlantic Coast Line long haul. We were moving much of it to the Atlantic Caost Line during the early days of the receivership, but not preferentially at all. They serve such a large part of the State of Florida that if a road intends to do business in Florida at all, they are going to do most of it with the Atlantic Coast Line. Besides, if we do business on the Florida East Coast Railroad, we would naturally do business with the Atlantic Coast Line. It is not my opinion that if there is a gap existing in the rails of the railroad it should be closed regardless of the traffic to be produced. I did not say so. In expressing my opinion that the Coast Line should have spent $40,000,000 to close this gap, had it not been able to acquire control of the A. B. & C. and thereby the rails of the A. B. & A., I did not state that there would be a benefit to traffic derived to the Coast Line. Regarding what benefit there would have been—consolidating their system, connecting up the broken two parts [fol. 702] of it which were not connected. I do not consider that should be done regardless of the traffic to be produced by the Atlantic Coast Line. I would not say regardless of the traffic, but without particular regard to the traffic. Of course, they would produce just as much traffic as they

could. They would want a line which would produce traffic, naturally. The Atlantic Coast Line could not obtain any higher rates by utilizing the mileage of the A. B. & A., now owned by the A. B. & C., on its route, than if it routed freight through Montgomery and Birmingham, but it would obtain a shorter haul, though, and a consequent saving. It would make a saving to route Florida products to Kentucky, Virginia, etc., via the A. B. & C. through Atlanta and Knoxville and through Augusta, Spartanburg and the Clinchfield. The shorter route is through Yemassee, shorter than the Clinchfield route through Yemassee and Atlanta. The Clinchfield route was available prior to the acquisition of the A. B. & C., also through Yemassee and Augusta to Atlanta. Both were available prior to the acquisition of the A. B. & C. I can indicate on these maps all the lines in Florida that the Atlantic Coast Line owned and operated mileage, exclusive of those of its affiliated companies, as shown on Exhibit No. 12. All those lines are Atlantic Coast Line Railroad; the line from Jacksonville and Waycross to Charleston; the line extending from a point near Augusta, just below the letter "G" to the northeast, continuing on to Richmond, Norfolk and Wilmington, and [fol. 703] some branch lines. Coming back to Georgia, the line from Waycross to Albany, Waycross to Thomasville, and Montgomery, and some small branch lines. I believe that constitutes the Atlantic Coast Line proper, with the exception of a part of that line going up to Winston-Salem —I overlooked that—up as far as Wadesboro. Wadesboro is just north of the North Carolina-South Carolina State Line, a little above that line, the remainder of that line being the Winston-Salem Southbound. The Clinchfield begins at Spartanburg and extends into the coal fields of Virginia. The line south of Spartanburg to Augusta is the Charleston and Western Carolina Railroad, extending from Spartanburg and Anderson to the coast, at a point which I have not named, but it is Port Royal, just above Savannah. The line from Augusta to Savannah is the Georgia Railr[illegible] with a branch to Macon, and three small branches. The line north of Atlanta to Knoxville and Chattanooga is the Louisville and Nashville Railroad, and the line south from Atlanta to Montgomery is the Atlanta & West Point and the Western Railway of Alabama, and the line from New Orleans through Montgomery, Birmingham, Nashville, on to

Louisville and Cincinnati is the Louisville & Nashville Railroad. Also from Frankfort to the east. That is the Louisville and Nashville. The line from Frankfort down to Knoxville is the Louisville & Nashville, from Cincinnati and Frankfort to Knoxville and Atlanta. Also L. & N. from Evansville to Memphis, and the N. C. and St. L. from Mem-
[fol. 704] phis to Nashville and Chattanooga to Atlanta. The line from St. Louis to Evansville is the L. & N. Railroad. The line from Louisville to Chicago is the C. I. & L., the so-called Monon. That covers the map, the main lines. The Coast Line has its own rails from Florida into Montgomery. It does not have its own rails from Florida into Anderson through Columbia. It has its own rails to Yemassee, which is the junction point just above Savannah; then that line continues to Charleston, and then it has another line from Augusta, extending northeastwardly. The line from the coast, Port Royal, into Augusta and on up to Spartanburg, Greenville and Anderson is the C. & W. C. The line from Greenville to Anderson is the C. & W. C. There is a short line in there, and I won't be sure, but the C. N. & L. is in that part of South Carolina. I am not exactly familiar with the geography. Regarding whether the longest haul from Florida to Nashville and Knoxville which can be taken over the owned lines of the Atlantic Coast Line is through Montgomery—to Nashville, referring to the Florida traffic, that is certainly true, and apparently so to Knoxville, but I have not the figures. There would be no difference in the earnings of the Coast Line on the traffic interchanged, no matter who controlled the A. B. & C. As to whether the Atlantic Coast Line would not have to supply the deficits—that is another matter. Of course, whatever the Coast Line supplies by way of deficits to the A. B. & C. would be that much loss. They have not sup-
[fol. 705] plied the deficits of the A. B. & C. Those deficits have been supplied largely because we had a little fat, and have lived on it, but we have gotten closer and closer to the bone. The Coast Line has made no advances to the A. B. & C. It has paid the dividend on the preferred stock. It has made no advances. When I spoke of the fact that the Atlantic Coast Line had not yet been forced to supply deficits and said we were living on "fat", in using the word "fat" I referred to our working assets and our credits for supplies. With reference to depreciation reserve—we do

not have to put up a depreciation in money. As to what else I mentioned—putting off the payment of our bills. I do not want to be understood as saying that the Atlantic Coast Line would have been justified in expending as much as $40,000,000 on January 1, 1927, in order to effectuate the saving of mileage from Waycross to Atlanta and from Thomasville to Montgomery, mentioned in my direct testimony. That was only a part of it. My opinion—and it is only my opinion, of course—is that this was a great big system of railroad, one of the largest in the United States, taking it altogether. One of its principal fields for producing traffic is in the State of Florida. A large part of that traffic moves to and from the West, meaning the Ohio River territory. This System, as I have explained, had a gap between the Florida line, Waycross and Atlanta. For the protection of their future, for the service, it is my opinion [fol. 706] that they were justified in spending as much as $40,000,000 to build a railroad to take care of that hiatus. Regarding how I would have expected the Atlantic Coast Line to get an adequate return on $40,000,000 of expenditure—the total traffic involved was very large. Of course, I do not know just how much there is between Florida and the West, but the total earnings of this system ran around $300,000,000 a year, and for the consolidation of two of the principal portions of the system it seems to me only a small sum of money, to spend $40,000,000 as a matter of protection, as well as a net revenue. I did not say that the Atlantic Coast Line acquired a large amount of additional traffic through the acquisition of the Atlanta, Birmingham & Coast. Of course, we can route some freight over the Atlantic Coast Line System Lines, but it is not large amount. I do not mean to say that such additional traffic would pay a return on $40,000,000. As to whether that leaves only the saving in mileage—it is the building of a bridge; it is the building of the middle span of a bridge. It protects the railroads. It protects them for the future, in my opinion. I have never figured out how much it is worth to a railroad like the Atlantic Coast Line to save the expense of hauling for a distance of 135 miles, such as I say would have been accomplished on the Waycross to Atlanta Line. If I did not know the volume of the traffic, of course, I could not figure it. With my knowledge of the volume of the traffic, that can [fol. 707] be so diverted, I do not have in mind any figures

showing the saving in expense. I have made no such calculation. We must bear in mind, I think, that it is the protection to the service, to the passenger service, for instance. By that "protection" phrase I mean to give the Atlantic Coast Line its own rails by a short direct line to compete with its strong competitors for this through traffic, freight and passenger. The protection is in the future. At present and since January, 1927, the ownership of the A. B. & C. has not resulted in any substantial benefit to the Atlantic Coast Line, in the earnings of the A. B. & C. Railroad. That is all I am acquainted with in that particular matter. It has had a beneficial effect upon the revenues of the Atlantic Coast Line to own the Atlanta, Birmingham & Coast, so far as it has affected it. The Coast Line has not to any great extent changed its routing of its Florida business to the North and West over the rails of the A. B. & C. since the acquisition and control of that company over what it was prior to January 1, 1927. The Florida traffic, of course, to a large extent, is routed just as the shipper wishes it. Only its proportion of the traffic is over the rails of the A. B. & C. If it has been increased, it has been largely due to our own efforts. The proportion has increased over what it was in some lines of traffic. The total business has decreased. The total business of the A. B. & C. Railroad has decreased, also every other railroad I know anything about [fol. 708] in the United States. I do not think the total percentage of the Atlantic Coast Line Florida business moving to the North and West routed via the A. B. & C. has substantially changed.

Redirect examination:

The apex of earnings of the Atlanta, Birmingham & Coast Railroad Company was the year 1926. Beginning with January, 1927, there has been a decline. The decline has been consistent throughout. That has been true all over the Southeast since 1929. The great roads operating in the Southeast, outside of the Atlantic Coast Line and its affiliates, making what we might refer to as the Atlantic Coast Line System, are the Southern Railway, Seaboard Air Line, the Florida East Coast, Central of Georgia, which is an affiliate of the Illinois Central and which connects with the Illinois Central at Birmingham, and are the large roads in that section of the country. The Florida East Coast is

in the hands of the receiver. It is 522 miles of main line, plus about 400 miles of branches. I do not know the date that it went in the hands of the receiver. It was in the last six or eight months. The Seaboard Air Line is in the hands of the receiver. It has about 4500 miles of line. It runs parallel, to quite a degree, with the Atlantic Coast Line in Florida. It has about 1,850 miles there as against the Atlantic Coast Line's 2100 miles. The Central of Georgia [fol. 709] is not considered prosperous. The Southern Railway is not considered prosperous. Their earnings have decreased in this period to an extraordinary amount. The Southern is not on a dividend basis. The Florida East Coast and Seaboard are not. The Central of Georgia is not. The Atlantic Coast Line is not, The Louisville & Nashville is not. There is no railroad in that part of the country presently on a dividend basis. The Atlanta and West Point is itself a bridge line in this route between New York and New Orleans and has been heretofore considered one of the most prosperous heavy-earning lines anywhere in the country in the Southeast. I understand that road is barely paying its expenses now. I have heard that it is running in the red. The Pennsylvania's earnings have fallen off most alarmingly. I am not informed about whether its dividends have stopped. The same statement is true of the New York Central as to the falling off of its earnings. The great roads of the country, and certainly the great roads of the Southeast, have passed from a condition of high prosperity to a very alarming financial condition. I testified that the A. B. & [illegible] Railroad Company had run in the red an aggregate amount of some eight hundred thousand dollars. During that period this road had a strike. It was a long duration and bitterly fought. The [fol. 710] destruction to traffic and property cost more than $800,000.

Recross-examination.

When the Atlantic Coast Line took over the control of the A. B. & C. they did not discourage our routing of A. B. & C. traffic via the Seaboard Air Line. I do not know when the Seaboard's peak of traffic was. It was 1926, 1927 or 1928. The A. B. & C. connects with the Seaboard Air Line at Thalman, Ga., near Brunswick; at Cordele, Ga., which is a point between Fitzgerald and Manchester; at Atlanta

and at Birmingham. The Seaboard's Florida lines would interchange business with us at Thalman, which is between Brunswick and Hortense, in the same neighborhood as Waycross. There is a miscellaneous interchange at Cordele; the same is true at Atlanta; only a small interchange at Birmingham, their line extending from Atlanta to Birmingham in a general way parallel with ours. They have no line from Brunswick to Birmingham. Their line extends from Thalman north to Savannah and then Richmond. They have a line from Savannah, crossing us at Cordele, to Montgomery. They have a line in Florida extending from Jacksonville westward to Tallahassee and to River Junction, which, however, does not connect with us, but connects with the Louisville & Nashville. As to whether the Seaboard Air Line was one of the roads as to which the receiver was negotiating, looking toward a possible sale of the properties in receivership—there was some discussion, and I suppose it might be called negotiations. I did [fol. 711] not participate in them at all. I do not know of any discussion with any other railroad than the Seaboard Air Line and the Atlantic Coast Line, looking toward a sale of the properties in receivership. Had the Atlantic Coast Line paid $40,000,000 for the property of the Atlanta, Birmingham & Coast, there would have been something for the stockholders of the old A. B. & A. As it was, the stockholders did not get anything. None of the bondholders received the face amount of their bonds. I do not think any of the bondholders received any accrued interest unpaid. It is my opinion that the Atlantic Coast Line got a great bargain.

Redirect examination.

There was a first and refunding issue of bonds which was issued as collateral, and the debts for which those were put up were paid in full. It is my understanding that the first mortgage was on all the property in Birmingham to Atlanta and Montezuma and the junior mortgage was on the properties beyond that.

[fol. 712] Benjamin L. Bugg thereupon was called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

My name is Benjamin L. Bugg; residence, Atlanta, Ga. I am now President of the Atlanta, Birmingham & Coast Railroad Company. I have been connected with that company during the past 20 years with the exception of the war period. During the war period I was in the United States Army as Lieutenant Colonel of Engineers. I commanded the 66th Regiment of Engineers abroad, took it over. I first came with the property of the Atlanta, Birmingham & Coast Railroad Company in the late summer or early fall of 1912, as Traffic Manager. Very shortly afterward I was appointed Assistant General Manager.

In 1916, upon the reorganization, I was appointed General Manager for the Atlanta, Birmingham & Atlantic Railway Company. In 1917 I was appointed Vice President and General Manager of the same company. I was General Manager during the last few months of Federal control of the railways, of this same railway, and upon the termination of Federal control, on March 1, 1920, was elected President of the Railway Company. In 1921 I was appointed Receiver, and placed in charge of the property, under orders of the United States District Court for the Northern District of Georgia. I continued in this capacity until the reorganization of the property under the name of Atlanta, Birmingham & Coast Railroad Company, and was elected President of that company on January 4, 1927. [fol. 713] I still occupy that position. In my former testimony I have identified the property acquired by the A. B. C. Railroad Company with the property valued in Finance Docket No. 1, 75 I. C. C. 645, and at that time owned by the A. B. & A. Railroad Company, the Georgia Terminal Company, the Alabama Terminal Railroad Company, as changed by additions, betterments and abandonments. The property now owned by the A. B. & C. Railroad Company is the property valued in the above-mentioned proceedings, as changed by additions, betterments and abandonments. I have heretofore testified that I was connected with the property in 1914, and I have testified to my connection with the property in various capacities since that time. When this property was valued, it was then under the ownership of three corporations or their receivers. Those corporations or their receivers were not satisfied with the valuations placed by the Interstate Commerce Commission.

They contested the valuation, and tried to get a higher valuation. I heard the evidence of Mr. Willoughby in this cause delivered on the 10th of June. I heard all of Mr. Willoughby's testimony. I entirely agree with Mr. Willoughby's evidence as to the cost of reproduction of the Atlanta, Birmingham & Coast Railroad Company's property in 1927 as compared with June 30, 1914; that cost would have been very much greater in 1927 than in 1914. I have already stated to you something of my knowledge of the costs of commodities, labor, supplies and other elements entering into the construction of railroad property at Janu-
[fol. 714] ary 1, 1927, as compared with June 30, 1914. I have before me a statement—and hand it to you—of the gross revenues, freight and passenger, in the aggregate, and the railway operating income of this property in 1914 as compared with 1926 as follows:

1926, freight revenue—$4,649,625; in 1914 it was $2,081,-554, an increase of $2,568,071 or 123.4 per cent.

Passenger revenue in 1926 was $518,168; in 1914 it was $599,656, a decrease of $81,488, or 13.6 per cent.

The gross revenue in 1926 was $5,726,345; in 1914 it was $2,945,103, an increase of $2,781,242, or 94.4 per cent.

The railway operating income, that is net after taxes, in 1926, was $345,061 and in 1914 it was $253,520, an increase of $91,496 or 36.1 per cent.

I have a statement of the population of the Georgia and Alabama counties through which the Atlanta, Birmingham & Coast operates. It shows the population of Georgia and Alabama counties served by the Atlanta, Birmingham & Coast Railroad Company, as shown in the United States Census reports, as follows:

In Georgia the population of these counties in 1930 was 726,556; in 1910 it was 545,961, an increase of 180,595 or 33.1 per cent.

In Alabama the population of these counties in 1930 was 588,252, and in 1910 it was 373,067, an increase of 215,185 or 57.5 per cent.

The total population of the counties in Georgia and Ala-
[fol. 715] bama in 1930 was 1,314,808; in 1910 it was 919,028, an increase of 395,780 or 43%. Those figures as to population are taken from the United States Census. The assessed value of real estate in Georgia for the year 1914 was $514,-917,710; in the year 1926 it was $734,178,493. In Georgia

for the year 1914 the assessed value was $387,709,124; and in the year 1926 it was $699,438,884. I should say that with the increase in population, and with the increase of property values, that railroad property would likewise increase in value. The gross operating revenue of this property had increased in 1926 as compared with 1914 by 94.4 per cent. The population of the counties through which the road runs in Georgia and Alabama had increased 43 pe cent. The Florida traffic in citrus fruits and vegetables, and all those things which we call perishable, as well as the inbound movement into Florida, had increased. I find all of the elements which make the value of a railroad property, for any purpose, had greatly increased in 1927 or 1926 over 1914, and my opinion is, and my answer is, that for all purposes for which a railroad may be valued, the property now owned by the Atlanta, Birmingham & Coast Railroad Company was more valuable on January 1, 1927, than it was on January 30, 1914.

(Whereupon, at 4:35 o'clock p. m., an adjournment was taken until tomorrow morning at 10 o'clock, Tuesday, July 12, 1932.)

[fol. 716] The hearing was resumed in the Main Hearing Room, I. C. C. Building, Washington, D. C., Tuesday, July 12, 1932, at 10 o'clock A. M., pursuant to adjournment, with appearances as heretofore.

B. L. Bugg, the witness on the stand at the time of taking the adjournment, resumed the witness stand and testified further as follows:

Direct examination.

The value of the properties acquired by the Atlanta, Birmingham & Coast Railroad Company on January 1, 1927 for sale or exchange purposes, in my opinion, was not less than the amount sought to be set up in this value of road and equipment, namely, $24,000,000 plus. The reasons for that answer are the location of the road, with s relation to the properties of the Atlantic Coast Line Railroad Company to the south of it and to the north of it; the general traffic conditions at that time which were probably at about

the peak of traffic conditions in this country in the history of the railroads; the further fact of the physical condition of the property which had been greatly improved during the past previous few years; the general improvement in the territory served by the railroad, particularly in the industrial centers of Birmingham and Atlanta, these two cities being, perhaps, the most rapidly growing of any of [fol. 717] the larger cities of the South, and both developing in industrial manufacturing of various kinds. The terminal facilities in both of these cities are very valuable. The Atlanta, Birmingham & Coast Railroad enters the Birmingham industrial district at Bessemer. It has direct rail connections there with the Louisville & Nashville Railroad, the Southern Railway, the St. Louis-Francisco Railway, and the Birmingham Southern Railroad, the latter being an industrial road owned by and serving the manufacturing plant and coal and ore mines of the Tennessee Coal, Iron & Railroad Company, and also as a common carrier serving many other industrial plants within the District. From Bessemer to Birmingham proper is 11 miles. The main line is a single track road but laid out for double track. Abutments and piers, also bridges, between the two points were constructed to provide for a second main track. One and a half miles from Bessemer physical connection is had with the railroad of the Woodward Iron company, serving the coal and ore mines and manufacturing plants of that company. All of the territory between Bessemer and Birmingham is peculiarly adaptable to industrial development and many manufacturing industries of importance have already been located. The location of the Atlanta, Birmingham & Coast Railroad is such as to [fol. 718] enable it to serve industries already located and those that may be later established in this territory. The right of way of the railroad company extends into the heart of the business district of the City of Birmingham, within a short distance of the passenger station of the Louisville & Nashville Railroad Company, over whose tracks the passenger trains of the Atlanta, Birmingham & Coast Railroad Company reaches the station, under a trackage and rental agreement. A physical connection is had in the City of Birmingham with the Louisville & Nashville Railroad, the Southern Railway, the St. Louis-San Francisco Railway, the Birmingham Southern Railroad and the Belt Line Rail-

road, and many industries and business establishments are reached direct by the tracks of the Atlanta, Birmingham & Coast Railroad Company. Its right of way holdings provide ample grounds for yards, tracks, stations, warehouses, and all facilities required in the operation of railroad terminals. At Atlanta, entrance is had into the heart of the city over the right of way of tracks owned by the railroad company. The freight yards are at Bellwood, 2½ miles from the Atlanta Terminal Station. Entrance for its passenger trains into the Terminal Station is obtained by direct connection with the Southern Railway tracks, and trackage rights for the operation of its passenger trains over that road, a distance of about two miles into the Terminal Sta- [fol. 719] tion. In addition, the railroad company owns a right of way which would enable it to connect direct with the tracks of the Atlanta Terminal Company. It is 2½ miles from Bellwood to the local freight terminals which are located immediately opposite and not more than a block distant from the Atlanta Terminal Station. In Atlanta, direct physical connection is had with the Southern Railway, Nashville, Chattanooga & St. Louis Railway, Louisville & Nashville Railroad, Atlanta & West Point Railroad and Georgia Railroad, the last three being reached over a belt line with which the Atlanta, Birmingham & Coast has direct track connections. The freight terminals amply provide for yard tracks, team tracks, industrial tracks, freight station and warehouse, and many important industries are served directly by the rails of the railroad company. Both at Atlanta *at* Birmingham the terminals are strategically well located in the heart of the cities, and the right of way which makes this possible would have cost many times more at January 1, 1927 than when the property was acquired, or on June 30, 1914. In fact, it would have cost to reproduce these terminals at January 1, 1927 a sum considerably greater than the total amount proposed by the Bureau of Accounts to be set up in Account No. 701—Investment in Road and Equipment. At Brunswick, Ga., the tracks of [fol. 720] the railroad company form a complete loop around the city, reaching and serving directly practically the entire industrial and business interests. These tracks also reach and serve waterfront terminals, consisting of docks, wharves and warehouses, owned and operated by the railroad company. Direct physical connection is had

at Brunswick with the other two lines serving that port, namely, the Atlantic Coast Line and the Southern Railway. Regarding the figures $24,010.135.47, Investment in Road and Equipment, Account No. 701, shown in Exhibit No. 10—in my opinion the figures stated are the proper figures to be put in that Account No. 701, as the opening entry of the books of the Atlanta, Birmingham & Coast Railroad Company, as of January 1, 1927. Heretofore in Dockets Nos. 5454 and 5470, as Exhibit "B", in my testimony, I stated this item in Account No. 701—Investment in Road and Equipment as of January 1, 1927, at $24,481,893.86. A deferred retirement charge due to abandonment of certain terminal facilities, situated for the most part at Brunswick, Ga., reduces the figure there stated as $24,481,893.86. After allowing for those abandonments, Account No. 701 should be stated, in my opinion, in the opening entry of the books for the Atlanta, Birmingham & Coast Railroad Company, as of January 1, 1927, at $24,010,135.47, as has been testi- [fol. 721] fied to by Mr. Bell. That $24,010,135.47 is the figure which I referred to a few minutes ago as $24,000,000 plus. In my opinion the Investment in Road and Equipment of the Atlanta, Birmingham & Coast Railroad Company on January 1, 1927, was worth at least that much. In my opinion the location of the Atlanta, Birmingham & Coast Railroad Company's property adds a great deal to its value, and the Interstate Commerce Commission so expressed itsself in 63 I. C. C. Reports, In the Matter of Consolidation of Railway Properties. I fully concur in what the Commission there says, that this value arises from the relation of the Atlanta, Birmingham & Coast Railroad Company to the larger systems roundabout, particularly the Atlantic Coast Line and the Louisville & Nashville and allied roads. My information is that the Atlantic Coast Line Railroad Company owns a majority of the voting stock of the Louisville & Nashville Railroad Company. The majority of the boards of the Atlantic Coast Line and the L. & N. is represented by the same persons; and I know that they operate in close unison. The L. & N. Railroad Company operates, for the most part, in the western part of that portion of the United States which is east of the Mississippi River. It comes down to Birmingham, Alabama. The Atlanta, Birmingham & Coast Railroad's lines run to Birmingham. The Atlanta, Birmingham & Coast

Railroad touches the Atlantic Coast Line at several points in South Georgia, such as Brunswick, Offerman, Hortense, Waycross, Tifton and Thomasville. The Louisville & Nashville also comes down to Atlanta, Ga. The Atlanta, Bir- [fol. 722] mingham & Coast Railroad at its connection with the Atlantic Coast Line at Waycross and Offerman forms part of a direct line for through westbound traffic from Florida points touched by the Atlantic Coast Line, and vice versa. It makes a very direct line. Traffic brought up from Florida over the Atlantic Coast Line is delivered to the Atlanta, Birmingham & Coast at Waycross (or Offerman) and can be handled to Atlanta, where the Atlanta, Birmingham & Coast connects with the L. & N. Railroad, and the N. C. & St. L. Railway; the Atlanta, Birmingham & Coast can also handle such traffic to Birmingham, Ala. My information is that the L. & N. Railroad owns a majority of the stock of the N. C. & St. L. Railway Company. I know they are operated in close unison. In my opinion the relation of the Atlanta, Birmingham & Coast properties to the Atlantic Coast Line, the L. & N. and the N. C. & St. L. Railway, contributes to the value of the Atlanta, Birmingham & Coast. I think it contributes very greatly to its value. To state why it does so, it is in the power of the Atlantic Coast Line Railroad Company to give to the Atlanta, Birmingham & Coast Railroad Company's lines a great deal of unrouted westbound traffic which the Atlantic Coast Line originates in Florida and South Georgia; and to influence the shippers to so route even a greater proportion. The Atlantic Coast Line has about 2100 miles of line in Florida and handles more of perishable traffic out of Florida than perhaps any other line. In addition to the traffic which it [fol. 723] originates, the Atlantic Coast Line receives a great deal of traffic brought into Jacksonville by the Florida East Coast Railway. The Florida East Coast Railway now has about 900 miles of line going down to the very tip of the peninsula, Key West. At Atlanta, the Atlanta, Birmingham & Coast touched both the L. & N. and the N. C. & St. L., each of which serves the west. It can be fed at its northern termini, Birmingham and Atlanta; and at its southern termini, Waycross, Offerman, Thomasville and Tifton, by the Atlantic Coast Line. Just as it can be fed by these roads at these points of interchange, it can be used as an instrument for the transfer of traffic to them. The

facts which I have stated make the Atlanta, Birmingham & Coast Railroad Company's property a bridge line, and I thing that this gives to this property a great deal of value. I agree very heartily with Mr. Willoughby's testimony, in effect, that if this property now owned by the Atlanta, Birmingham & Coast Railroad Company had not been built, it should now be built, except that here and there some parts of the road might have been differently laid out. Mr. Willoughby made a like reservation, and probably the reservation I might make, somebody else might not make. As to why I think the road should be built, if it had not already been built—such a road should be owned by the Atlantic Coast Line Railroad System, otherwise that system is left in an extremely exposed position as to its competitors, and, further, because it makes a short line of transportation between important points on traffic which should move [fol. 724] quickly. The lands which the Atlanta, Birmingham & Coast Railroad has and the lands which it had at the time of the valuation, in Atlanta and Birmingham, are identical, with the exception of comparatively small units which from time to time have been disposed of to industrial concerns for the locating of industries, and, then, we have, in addition, used funds derived from the sale of those parcels to purchase other parcels of land. So that, practically, it is the same property, certainly as to the carrier property.

Cross-examination.

I am the same Mr. Bugg who testified in Dockets Nos. 5454 and 5470, Finance. I have not seen the stock book. I do not know how the non-par stock was issued to the Atlantic Coast Line. It was delivered to the Atlantic Coast Line representative on January 4, 1927. I do not know that the shares were then made out and filled in to the Coast Line. I was not connected with the Atlanta, Birmingham & Coast Railroad Company until January 4th. I do know that the stock was delivered to the representative on that date. I did not talk with anybody concerning taking the presidency of the Atlanta, Birmingham and Coast. The Board of Directors elected me at the meeting at which the property was turned over to me, as receiver, to the Atlanta, Birmingham & Coast Railroad Company. The directors were Lyman Delano, George B. Elliott, R. C. Als-

ton, J. L. Edwards, B. L. Bugg. I was present at that meet-
[fol. 725] ing as one of the directors. The share of stock which I hold as a director's share was issued to me on that date. I had no discussion with anyone prior to that date concerning the presidency of this railroad. I was asked by counsel for an intervening stockholder, or alleged stockholder, at the hearing before the Examiner in Finance Docket No. 5454, whether I was going to be President or not, and I answered that I hoped so. With reference to the date on which it was determined that the Coast Line would undertake to acquire the control of and otherwise carry on the lines of rails known as the old A. B. & A. Railway—the agreement between the Bondholders' Protective Committee and the Atlantic Coast Line Railroad Company, as I recall, was dated February 23, 1926. I do not think it could have been determined that they would do so until they signed. As to whether I made any effort to dispose of the property of the A. B. & A. Railway Company, as receiver—I presented the matter to the Vice President, Executive Vice President, of the Atlantic Coast Line Railroad Company, in the latter part of December, 1924, simply as a suggestion on my part, not that I was trying to sell it to him, but suggested to him the possibility of the Atlantic Coast Line acquiring it. When I said the "Executive Vice President of the Atlantic Coast Line" I referred to Mr. Lyman Delano. That is the same Lyman Delano who is now a director of the Atlanta, Birmingham & Coast. Regarding who else I talked with concerning the suggested acquisition of the A. B. & A.—when the Bondholders' Protective Com-
[fol. 726] mittee were having some negotiations with the representatives of the Seaboard Air Line Railway Company, at their request I met Mr. Warfield, the President of the Seaboard Company, and gave him certain information that he requested. I did not discuss with him any terms or prospective terms of sale. That was in the fall of 1924. I do not remember the month. I think it was prior to my suggestion to Mr. Delano. I do not know whether the origin of the old A. B. & A. property can be stated briefly. There were some short line railroads built in South Georgia, principally for getting timber and hauling lumber out from saw mills. That section of the State at that time was very heavily timbered, with a very fine quality of yellow pine

timber. I think perhaps the original line was the Waycross Air Line, I believe it was called, which began at Waycross and came up in a northerly direction to Sessoms and Nicholls, Ga. I can show you that on one of the maps. Just begin right at Waycross and come up to the first junction. In my answer I was referring to Exhibit No. 12. There was another line that began at Offerman, where the Atlantic Coast Line crosses the Atlanta, Birmingham & Coast. It came up in a westerly direction. That road was known as the Offerman & Western. That also served the saw mills. There was a line built later out of Brunswick, Brunswick up to Offerman, known as the Brunswick & Birmingham Railroad Company. There was a line built from Tifton, which is on this other branch, on the line be-[fol. 727] tween Fitzgerald and Thomasville. From Tifton to Thomasville, known as the Tifton, Thomasville & Gulf. There was another line built from Tifton, in a northeasterly direction, known as the Tifton & Northeastern. A company was organized, known as the Atlantic & Birmingham Railway Company, which acquired these short lines that I have been describing, connected them, and built a new line in a northerly, northwesterly, direction, as far as Montezuma, Ga. Montezuma is not shown on this map. Montezuma is a point about half way between Manchester and Fitzgerald, Georgia. Later, the Atlanta, Birmingham & Atlantic Railroad Company was organized and acquired the holdings of the Atlantic & Birmingham Railway Company, and proceeded to extend the lines of railroad by new construction to Atlanta and Birmingham. That property that I have described now constitutes the Atlanta, Birmingham & Coast Railroad. I do not know the approximate dates of these various lines, such as the line from Waycross to Sessoms. That is ancient history. It was probably in the late 90's. The Atlantic & Birmingham Company was organized about 1904 or 1905. The organization of the A. B. & A. Railroad Company was about 1907. In the certificate and order issued October 26, 1926, I think, the Commission set forth a brief history of this property. I read it at the time. Perhaps I have read it since. I would not care to testify that that is an accurate statement of the history without checking it. I have no reason to question it. I did not include properties which I know have been abandoned, [fol. 728] because they are not a part of it now. My first

connection with the road was about September 1, 1912. The A. B. & A. Railroad Company was in receivership at that time. I was immediately employed by the General Manager for the receivers. There were two receivers, I think, at that time. Lack of funds was the cause of that receivership. I did not attempt to go behind that to see what had caused the lack of funds. This property had been involved in two receiverships. The receivership of the Atlanta, Birmingham & Atlantic Railroad Company extended from about 1908 or 1909 to December 31, 1915. The receivership of the Atlanta, Birmingham & Atlantic Railway Company extended from February 21, 1921 to December 31, 1926. The property was not under Federal control during the receivership. Federal control put it in receivership the second time. The dates of Federal control were January 1, 1918, to February 28, 1920. The road accepted the guaranty provisions of the Transportation Act. It was receiving Federal guaranty for a period of six mnths, March 1 to September 1, 1920. I think the Atlanta, Birmingham & Atlantic Bondholders' Protective Committee was organized about a year after the receivership, about 1922. There were two committees. One was a committee representing the Atlantic & Birmingham Railway bonds and the other represented the A. B. & A. Railway Company income bonds. The income bonds were those that were issued in 1915, and the A. & B. bonds were the bonds of the old Atlantic & Bir- [fol. 729] mingham. They were assumed by the Atlanta, Birmingham & Atlantic Railroad Company, and carried through the first receivership, without default. Both committees were organized about 1922. Regarding which one of the committees it was that undertook to dispose of the property—they operated jointly. They formed eventually a reorganization committee. That consisted of George E. Warren, Chairman, and Francis R. Hart was a member. They are the ones who signed the contract with the Atlantic Coast Line. George E. Roosevelt was a member. I would have to refer to the records to name them all. The entire committee signed the agreement of February 23rd, 1926 or authorized it. There was no disagreement among the committees about the reorganization committee was formed about 1925. I made no effort to interest the Seaboard. It was subsequent to my interview with Mr. Delano that efforts were made to interest the Seaboard and the Atlantic

Coast Line. The Seaboard made no suggestions to me whatever. I could not testify as to what suggestions they made to the bondholders. I never attended a meeting between the Bondholders' Committee and the representative of the Seaboard Air Line Railway. I was in touch with the Bondholders' Committee from time to time and advised with them, but I do not recall all the details of the negotiations. I do not recall the details at all, because I was not present at any of the meetings. They discussed it with me from time to time. They thought they had traded with the [fol. 730] Seaboard. I do not know on what basis. I knew about the Woodward proposition. I do not remember the details of it. Whatever it was, it did not come to the point of a real offer. I think Mr. Woodward's idea was to sell the road to another purchaser, but he did not get the purchaser. I think the offer was tentative as well as the agreement. They never got to the point of a firm offer, because Mr. Woodward did not have a purchaser; he could not get a purchaser. I do not think Mr. Woodward had expected to interest the Atlantic Coast Line. As to whether I recall that some time in 1925 a Mr. Babage approached the Committee—I remember somebody by that name, but I never met Mr. Babage, and I do not know what his proposition was. His proposition was not laid before me. If it was, it was not of enough importance to impress me. I do not remember it. I do not know whether or not Mr. Babage expected to turn the property over to the Atlantic Coast Line. I was not informed of the efforts of the Chairman of the Bondholders' Protective Committee to interest the Chase Securities Corporation. I knew nothing of that. Let me say right here about those various offers, as you call them: When a railroad is in a receivership, there are always a lot of people coming along with a lot of wild ideas about reorganizing, and a lot of them do not mean anything at all, because they have got no financial backing and have got no prospective purchaser, but are just trying to horn in with an idea of making a lot of money, and a lot of those situa- [fol. 731] tions arose which made no impression on me because they did not mean anything at the time. I had a very clear idea about the ability of purchasers to carry through a deal. I was not interested in these nebulous negotiations. The property could not remain in receivership forever. The fact is there was some urgency to lift the receivership.

I do not think everybody connected with the road was bending every effort to find some solution. It was not the business of everybody connected with the road. Their business, in the main, was to operate it. It was not my duty, as receiver, to dispose of the road. The parties that were most interested in that were the bondholders. I cooperated with the bondholders to the extent that seemed proper and desirable to help them. Apparently the stockholders were not interested in any way. The stockholders made no effort to buy in the property, and made no suggestion of putting up any more money to lift the receivership. As to whether a committee was organized until after the sale—I do not think there was any committee then. An individual stockholder, at least an attorney for an individual stockholder, undertook to file an intervention after the plan or reorganization was announced. With reference to the $30,000,000 capital stock on January 1, 1916—I do not know that that stock was sold. That reorganization was underwritten by Hayden-Stone Company. I do not know that that stock was sold at the price of $12.00 a share. I know that the bondholders, holding an issue of $14,443,000 of [fol. 732] bonds of the A. B & A. Railroad Company, were given the privilege of subscribing to that stock at $12.00 a share. That is all they got for their bonds. As to whether I know how much was realized upon the total issue of that $30,000,000—$12.00 a share would be $3,600,000. As to whether the $9,255,786.78 was made up of first mortgage bonds of the old A. & B. in the amount of $4,090,000 and certain 5 per cent. income bonds issued to the holders of receiver's certificates—that does not make all of that amount of $9,255,786.78. I do not seem to be able to check (Respondent's Exhibit No. 6) the exact amount that you name there, but the bond issued provided for in that capitalization of the A., B. & A. Railway Company was $4,090,000 of that A. & B. mortgage and $5,200,000 of income bonds. There was something less than that full amount issued—I mean of the $5,200,000. I can not check those exact figures but the amount actually issued was about $4,543,906.78. The aggregate of the amounts received for the common stock which was, as I say, to wipe out certain of the old bonds for the receiver's certificates and liens, canceled by the issuance of the income bonds and script, when added to the $4,090,00 old A. & B. bonds was very slightly in

excess of $12,000,000. There were $825,000 of first and refunding bonds issued. Those $825,000 first and refunding bonds were never sold. They were used as collateral in making loans. Perhaps they were not involved in the opening entry. They were provided for in the reorganization [fol. 733] at $15,000,000. The reorganization necessarily took place prior to the stating of the balance which is stated on Exhibit No. 6. The reorganization became effective, that is, it took over the property January 1, 1916. It had to be effective before it could take over the property. I assume that those income bonds were issued some time in 1915. Some of the members of the Bondholders' Committees went over the railroad with me. I think we conferred about everything that could possibly be conferred about in connection with the whole situation, based on their desire to get some money for the bondholders out of it. They discussed with me some suggestion made to them by Mr. Walters of the Atlantic Coast Line. He had been negotiating with them for the purchase of the road. They had had one or two conferences when they came down for a trip over the road, but they had not reached any agreement with him. They had been merely discussing it. The liens which were superior prior to that of the bondholders amounted roughly to somewhere around $4,000,000. As to whether, by paying off that $4,000,000, the bondholders could themselves have taken over this property—only under a foreclosure. The foreclosure which took place, somewhere about $4,000,000, was all that was paid in the way of payment of liens. Regarding the transaction by which the Atlantic Coast Line acquired 384 shares of the preferred stock—there were $64,300 of bonds that were not deposited with the Committee. The cash settlement that was authorized by the court [fol. 734] for the undeposited bonds was at the rate of $521.20 per thousand dollar bond. The special master redeemed the undeposited bonds at the rate of $521.20, and paid for them out of the deposit of $50,000 that was put up by the Atlantic Coast Line Railroad Company as earnest on the bid for the protective committee or the reorganization committee, for which the Atlantic Coast Line received 384 shares of preferred stock at the rate of $60 preferred stock per $100 of bonds. The $64,300 of bonds multiplied by 60 gives 384 shares. They should have received in addition $156.36 in money. The $50,000 was put up with the Special

Master prior to the sale. It had to be put up as an earnest on a bid. June 22nd, 1926, was the date of sale. That is as near the date as I could give you when the $50,000 was put up. It was supplied by the Atlantic Coast Line for the purpose of bidding on the property, and at $521.20 per one thousand dollar bond, 64.3 bonds were retired at a total of $33,513.16. The $16,486.84 labeled as refund of amount deposited with reorganization committee to pay non-assenting bondholders, is the difference between the cash settlement for the bonds turned over to the Atlantic Coast Line Railroad Company, which, as you state, amounted to $33,513.16,—that is the difference between that cash amount and the $50,000 deposited with the Special Master. The Special Master paid the cash for those bonds, and the amount remaining of $16,486.84 he turned over to me for the account of the Atlantic Coast Line Railroad Company, and I am holding it in the accounts of the At-
[fol. 735] lanta, Birmingham & Coast Railroad Company to the credit of the Atlantic Coast Line Railroad Company. We are holding that under unadjusted credits. When I spoke of an item of thirty four odd thousand dollars of bond- I did not mean preferred stock. It was $64,300 of bonds, of which 384 shares of preferred stock were issued at $100 a share. $64,000 of bonds would produce the 384 shares of preferred stock at 60, and leave fractional bonds of $300 or over, and those cashed at $521.20 would make $156.36 in cash additional to be paid to the Atlantic Coast Line Railroad Company. I suppose they have gotten it. That amount and $156.36 and 384 shares of par value of $100 per share was not what they got in exchange for that $33,513. I do not know whether they have gotten the $156.36 that I spoke of. In explanation of an item in Exhibits Nos. 1 and 2 of equipment obligations noted in the column opposite the word "interest" and then the column is headed "paid by A. B. & C. Railway $267,297.01, I will state that when the liabilities of the receivership were estimated in Exhibit A with the agreement of February 23, 1926, totaling $3,677,500—there was an item of $444,500 for equipment obligations of the receiver for rebuilding 300 box cars, 257 coal cars and 100 flat cars. Those obligations were outstanding. The receiver had contracted for $75,000 additional obligations for rebuilding 100 flat cars, making a total of $519,500. That was a year before the termination of the receivership. At the

termination of the receivership the outstanding notes for that account were $322,500, which were all paid by the receiver subsequent to January 1, 1927, out of the current funds of the A. B. & C. Railroad Company. I said paid by [fol. 736] the receiver, and I should have said paid by the A. B. & C. Railroad and not by the receiver. Those obligations were paid by the receiver up to December 31, 1926. Subsequent to that date they were paid as they fell due each month by the A. B. & C. Railroad Company, and charged against the receiver for the account of the Atlantic Coast Line Railroad Company under its obligation. The Atlantic Coast Line has assumed all those obligations, and admits them. I think I might add, that they have made payments on those obligations from time to time, as they have been requested. On the $322,500 that was a reduction there of some $5500. $267,000 is shown on the books of the A. B. & C. against the Atlantic Coast Line Railroad Company as a balance of that $322,500. I do not know whether all of the cars were rebuilt or finished before January 1, 1927. The obligations were made, and they were in process of reconstruction, but whether they were finished before that time, I do not know. Probably they were almost anyway. It was a continuous process extending over several months. Regarding whether it must have begun before the agreement of February 23, 1926—it was all begun except this $75,000 contract had not begun. The obligation had been entered into but there had been no notes issued under that $75,000 item. It is my recollection that the work of rebuilding extended all through the year 1926 and perhaps into 1927. I am the Mr. B. L. Bugg who signed and [fol. 737] swore to the report to the Interstate Commerce Commission made under Section 20a by the Atlanta, Birmingham & Coast of its disposition of the stock. I have been operating the Atlanta, Birmingham & Coast about 15 years without the backing of the Atlantic Coast Line. I was already undertaking it and have continued to do so. As to whether it has been rather a hard time operating it—a receivership is not such a hard time sometimes. It is a right comfortable position for the receiver, perhaps. I imagine it is not a comfortable position for the stockholders or bondholders. It is not enjoyed by the owners of the property. I would not have minded operating it as long as they kept me on the payroll. I think it is recorded here that the

figures shown as the liability for the no-par common stock on the balance sheet offered yesterday by Mr. Bell and identified as Exhibit No. 10 were made by Haskins & Sells, certified public accountants. The direction as to process by which he was to make up the balance sheet did not come from me. Haskins & Sells have been making figures since 1927. The first set of figures they made up, I think, was made in 1927. The last set was made in 1932. The so-called Exhibit "A" attached to the formal application in Finance Docket No. 5454, together with a letter dated June 7, 1927, from Haskins & Sells to the Atlanta, Birmingham & Coast Railroad Company, is the first one I know anything about. This Exhibit "A", as I understand it, was made [fol. 738] up on the basis of reproduction cost new at June 30, 1914, built up to December 31, 1926, with the net additions and betterments. Subsequently, that basis was changed to the Commission's final value, as found in Docket No. 1. That is referred to as Exhibit "B" in Docket Nos. 5454 and 5470. I say the figures presented yesterday by Mr. Bell were determined in 1932 in March. Those figures were set up on the same basis as the statement just referred to as Exhibit "B", except there were some corrections due to the abandonment of certain properties, principally at Brunswick, Ga., which had not been retired out of the accounts. The deduction of those items from Account 701, Investment in Road and Equipment, shown as $24,481,893.86 on Exhibit "B", Docket No. 5454 and No. 5470, dated February 4, 1929, that which made this item in the proposed balance sheet of $24,010,135.47 in Exhibit No. 10. Haskins & Sells furnished these various sets of figures to me or to the auditor, perhaps both. I refer to the auditor of the A. B. & C. Railroad Company. When the matter was up first in 1927 as to what should be entered on the books of the Atlanta, Birmingham & Coast there were a great many conferences about the matter with the auditor of the Atlanta, Birmingham & Coast, with counsel, and with members of the Board of Directors. There were not any with the officers of the Atlantic Coast Line prior to or in 1927. The first conferences with the officers of the Coast Line were in March, 1932. Present then were J. L. Edwards, Vice President, Atlanta, Birming-[fol. 739] ham & Coast Railroad Company; A. D. Daniel, Auditor, Atlanta, Birmingham & Coast Railroad Company;

B. L. Bell, Assistant Auditor, Atlanta, Birmingham & Coast Railroad Company; H. D. Bradley of the Auditor's office, Atlanta, Birmingham & Coast Railroad Company; L. C. Bryant, of the Auditor's Office of the Atlanta, Birmingham & Coast Railroad; B. L. Bugg, President, Atlanta, Birmingham & Coast Railroad Company. For the Atlantic Coast Line Railroad Company: T. F. Darden; Mr. A. D. McCaig; Mr. F. D. Lemmon. For Haskins & Sells; Mr. H. B. Tompkins; Mr. Pfautz and Mr. Dix, the last three all being representatives of Haskins & Sells. The Atlantic Coast Line holds all of the voting stock of the Atlanta, Birmingham & Coast, except five shares held in the names of the directors. The Atlantic Coast Line votes that stock at the meetings. The shares of the directors are endorsed in blank back to the Atlantic Coast Line Railroad Company. As I recall it, the original suggestion for the set-up of the balance sheet of the Atlanta, Birmingham & Coast as of January 1, 1927, came from Haskins & Sells. I just have hearsay knowledge on the subject of who paid Haskins & Sells for their services in preparing the original balance sheet. The Atlantic Coast Line Railroad Company, I understand, paid them for their services. We had paid them for services in auditing our accounts for every year since December 31, 1926. They audited the accounts of the receiver, with my permission, at 1925, for which the Atlantic Coast Line presumably paid them. I did not. I think [fol. 740] they were employed in 1925 by the Atlantic Coast Line to make audits of the Coast Line's books. The Coast Line asked me if I objected to letting them audit the accounts for 1925, and, of course, I had no objection, but I paid them nothing for that audit. I do not think they worked for accommodation. I suppose they were employed by the Atlantic Coast Line Railroad Company to audit the books of the A. B. & C. for each of the years since January 1, 1927. The Atlantic Coast Line Railroad Company not only holds the stock control but exercises it through the Board of Directors. I did not make any computations, either before February, 1926, or thereafter prior to January 1, 1927, indicating the earning power of the properties of the A. B. & A. Railway Company, expected after January 1, 1927. As to whether any were made under my direction—there was a memorandum made by me about the time the Committees had the negotiations on with the At-

lantic Coast Line Railroad Company, showing what was the actual result from operation for a period of one year, beginning, as I remember it, November 1, 1924, and ending October 31, 1925. That statement showed $400,000 in the way of earnings for that period. I do not remember whether that was after taxes or before taxes. I have not got it with me. My recollection is that it was about $400,000 after taxes. I have not made any estimate for anyone indicating this railroad had any prospects of an earning power equal to the dividends on its preferred stock. As to [fol. 741] whether I see any incongruity in undertaking to set up on the books of the Atlanta, Birmingham & Coast a liability of around twenty-one and a half million dollars for the common stock of that road which was carried on the books of the Atlantic Coast Line as an asset of approximately $4,000,000—there is no more incongruity in that proposed set-up than the set-up of the value of road and equipment of around $9,000,000. The Atlanta, Birmingham & Coast delivered the no-par stock to the representative of the Atlantic Coast Line Railroad, Mr. Elliott. Mr. Elliott at that time was Vice President and General Counsel of the Atlantic Coast Line Railroad Company. The preferred stock of the Atlanta, Birmingham & Coast was distributed to the depositors of the bonds through the reorganization committee. It was issued by the Atlanta, Birmingham & Coast. I do not know to whom they delivered it when they issued it. I know generally that it was issued to the Bondholders' Committee in satisfaction of the bonds. On January 4, 1927, the Atlanta, Birmingham and Coast issued its stock, common and preferred, to the Bondholders' Committee for or at their direction. I think the actual issuance of the common stock was at the direction of the Committee to the Coast Line. On that same day the guarantee of the preferred stock was executed by the Coast Line, and at the same meeting, and from the beginning the preferred stock was in accordance with the plan of February 23, 1926, guaranteed as to dividend and principal by the Atlantic Coast Line. The preferred stock [fol. 742] shows on its face or back that it is guaranteed by the Atlantic Coast Line. I did not at any time, as receiver, consider scrapping the Atlanta, Birmingham & Atlantic Railway. There was not any menace of it being necessary to dismantle that road more than the menace to

a great many railroads today. Any railroad that is financially involved is menaced. I do not recall any specific call upon me by the court, the Bondholders' Committee, or anyone, for any estimate of the amount that might be realized from dismantling that property. I may, in a general study of the situation, have made some rough estimate of that kind, but I do not recall it. I would not be able now to tell you even approximately what that estimate was. Guessing at it now, I would say eight or ten million dollars. I testified before this Commission in Docket No. 5454 and 5470 that I did not believe that the Atlanta, Birmingham & Atlantic could be successfully operated permanently as an independent property. I stated this morning that I would be willing to operate it as long as it lasted. Without checking the figures contained in the annual periods between January 1, 1916, and December 31, 1926, portraying correctly the operating results of the operations of the Atlanta, Birmingham & Atlantic Railway and/or the Railroad Administration and the receiver, I will give you some figures of that operation. The reorganized property of the Atlanta—I will go back to the organization of the A., B. & A. Railroad in 1907. It shows a net operating revenue in that year of $416,697. In 1908 it showed a net operating revenue of $426,662. There was, I guess we would call it, [fol. 743] a stringency—we have different names for these different periods—there was a financial stringency about that period, and in 1909 the net operating revenue was $357,026. About that time the road was built into Atlanta and Birmingham, and in 1910 the net operating revenue was $579,389. In 1911 it was $662,592. In 1912 it was $676,825. In 1913 it was $566,301. In 1914 it was $632,406, and then the World War broke, so that in 1915 it was $282,371.

For the fiscal year ending June 30, 1916 it was $597,527. It began to recover from the disruption of business in this country by the outbreak of the World War.

For the calendar year ended December 31, 1916, it was $784,658. That was the first year of operation of the reorganized company under the name of Atlanta, Birmingham & Atlantic Railway Company.

In 1917 it was $661,111, and on January 1, 1918, it was taken over by the Federal Railroad Administration, and

for that year the net operating revenue was a deficit of $335,074.

In 1919, another complete year of Federal operation, the deficit was more than doubled. It was $780,080. In 1920, with two months of the Federal Administration operation, six months of guarantee operation, and four months of corporate operation, under the conditions created by the Railroad Administration, the operating revenue showed a deficit of $1,096,228.

[fol. 744] In 1921, under the same conditions, that is, of corporate operations under conditions established by the Railroad Administration, and under the conditions of strike of railway employees, the result was a deficit of $1,579,450.

Under receivership operation in the year 1922 the deficit was reduced to $213,905. Under receivership operation in 1923, the deficit was wiped out and a net operating revenue of $70,048 was shown.

In 1924, under receivership operation, a net operating revenue of $421,371 was shown.

In 1925 the net operating revenue, still under receivership, was $420,022.

In 1926, under the last year of receivership, the net operating revenue was $520,438.

Those figures are illuminating in that they indicate that in each case following a financial stringency, or an outbreak of war, or the results of operations of the Railroad Administration, that the road recovered its earning power and continued to show improvement until some of these tragic events hit it again.

I have not corresponding figures of net railway operating income. The figures which I have just read do not reflect deductions for taxes. There would not be many more red figures than that. Taxes are less in every year, less than the net operating revenue in every year, except those in which there was a deficit, and in the year 1923 when it was [fol. 745] $70.048. Regarding whether in 1926 the A. B. & A. had enough local traffic to support it—I doubt if the A. B. & A. ever had enough local traffic to support it. We have never done more than was necessary under any condition to maintain the property in a condition of safety to handle the traffic that it was called on to handle. There probably was some deferred maintenance during the first two or three years of the receivership. That was largely

made up by the end of the receivership. In the equipment accounts we were very largely rebuilding equipment. That was a part of the program that was being carried out. The way and structures at the end of the receivership were in good, normal condition. I do not recall now just in what respect I disagreed with Mr. Willoughby as to reproducing of the railroad. I heard Mr. Willoughby's testimony given here. I recall his testimony as to the structures, that, as I recall it, probably $100,000 would put them in what he considered a good condition of maintenance. By "structures" I mean buildings. About $900,000 for rail, that he spread over a period of nine years. I concur in those estimates of Mr. Willoughby, that is, from his point of view. Regarding his testimony that the expenditure of that money would, in his opinion, restore the property to his standard of a normal condition—my standard is not as high. We have not got the traffic that warrants a higher standard or as high a standard as the Atlantic Coast Line Railroad [fol. 746] Company. The taxes on the A. B. & A. property had been permitted to go unpaid. The taxes for the year 1921 were an obligation of the corporation at the time of the receivership, and the receiver never paid those taxes. In subsequent years, including 1926, the taxes were receivership obligations and they were deferred, but at the termination of the receivership they had nearly all been paid except for the year 1926, and, of course, the year 1921 was a lien on the property ahead of the bondholders, and that was included in the amount of back taxes due. I do not remember at what time the Southern Railway acquired the Georgia, Southern & Florida. Add five years to the statement in my testimony in Finance Docket No. 5454 that it was some five or six years ago, and it would make it some ten or twelve years ago. It was prior to the negotiations between the receiver, the Bondholders' Committee and the Atlantic Coast Line. The Seaboard engaged in its program of expansion and development in 1924 and 1925, and possibly 1926; along about that time. At the time of the negotiations with the Atlantic Coast Line, the Southern and Seaboard and the Atlantic Coast Line were all rivals. The A. B. & A. Railway passenger traffic, I think, produced profit. I think it produced revenue in 1916, which is as far back as I have my record, through 1917, and from 1922 through 1926. For those years which I specified, I think it

produced a profit to net operating income. I said 1916 and 1917, and for 1923, 1924, 1925 and 1926. It is my belief [fol. 747] that during those years the passenger earnings which made a contribution to the gross net revenue were not all absorbed in running the trains. There was, in addition to the passenger revenues, revenues from mail and express, which further improved that condition. I mean earned on those same trains. Personally I am not a holder of any of the preferred stock of the Atlanta, Birmingham & Coast. I was at the time of its issuance on January 4, 1927. I think I held 200 shares of it. That was not received in exchange for bonds which I turned in. I bought it in the open market at 93¼ in 1927. The stock did not bear dividends for one year. I sold mine at 103. I mean it sold in the open market at 103. I sold it about 1928, I think. The stock stayed above par for some time. Until this present condition it has been looked upon as a very desirable investment in Georgia. I do not know of any very desirable investments down there now. As a good receiver of the A. B. & A. Railway properties, I was interested in attempting to obtain the most for its properties that could be obtained in the way of sale of the properties. Regarding whether I obtained, through the Reorganization Committee Agreement of February 23, 1926, the most that could have been obtained for the property of the A. B. & A. Railway Company—I did not obtain anything for them. They did it themselves. I was interested in their doing whatever would be satisfactory to them. They were evidently satisfied that this was the best trade they could get at that time. [fol. 748] In using the pronoun "them" I refer to the Bondholders' Committee. I doubt if I could have obtained more for the property than the Bondholders' Committee obtained for it. Under the conditions of stress and circumstance, under a foreclosure proceeding, where creditors were wanting their money it was my opinion that they obtained for the properties of the A. B. & A. Railway Company all that could have been obtained. I think the protective committees did all they could do to dispose of it. I principally advised. I did not do much aiding, because they did not ask much aid of me. My visit to Mr. Delano, to which I referred, was wholly voluntary on my part, and was made without suggestion or the knowledge of the committees, but shortly after seeing him I acquainted them

with what I had done. That was about the extent of my discussion with anybody about the offering of the property. My only suggestion to Mr. Delano was that if the Atlantic Coast Line ever expected to be interested in it, that I thought it was a good time for them to look into it. That was as far as I went. I think the Bondholders' Committee made every effort possible to sell the property in the open market. They did obtain a sale. A railroad is not like a bale of cotton, which can be sold in an established market, at a price, at any time. When I made an estimate this morning of market or exchange value of the A. B. & A. Railway properties of not less than $24,010,135.47 I meant or had in mind all the elements which enter into the value of a railroad property. I did not mean that there were [fol. 749] any quotations, market quotations, on railroads, like there is on stock and bonds, cotton and wheat, which would fix a price for them. I do not have in mind anybody who would pay that much for it as of that date. If there had been anybody, I would have told the Committee about it, if I had heard of anybody. (Examiner Walton then interrogated the witness.) There has been a considerable change in the volume of traffic handled with all lines. It is less. I doubt if there has been any material change in the proportion of traffic handled by the Atlantic Coast Line. Regarding whether I know anything about the transaction by which the railroad properties were conveyed to the Atlanta, Birmingham & Coast Railroad—they were conveyed by the special master to the purchasers, who were James A. Fowler and George E. Roosevelt. It was called a special master's deed. The deed was executed by the special master, who made the sale, by myself as receiver, by the corporate organization, and by the trustees of the mortgages. There was a conveyance by Fowler and Roosevelt to the Atlanta, Birmingham & Coast Railroad Company after the making of the deed to which I have referred, and after the incorporation of the Atlanta, Birmingham & Coast Railroad Company. There necessarily would be a conveyance from them. The parties who owned the obligations which were prior to the outstanding bonds did not join in the deed which I have referred to as the special master's deed to the purchasers. They were paid off. The purchasers took this conveyance subject to the prior obligations. In the deed [fol. 750] from the purchasers to the Atlanta, Birmingham

& Coast the owners of the outstanding prior obligations did not join with the purchasers. They were paid off subsequent to the taking of that deed. The whole transaction was contingent under the court order, as I understand it, in satisfaction of these prior liens. I do not regard the transactions between the Atlanta, Birmingham and Coast and the Atlantic Coast Line and the Reorganization Committee with respect to this matter as substantially one transaction. The Atlantic Coast Line had no dealings with the Atlanta, Birmingham & Coast until the control of it was passed to them with that stock on January 4th. The Atlanta, Birmingham & Coast Railroad Company insured to itself, through the contract of the Reorganization Committee with the Atlantic Coast Line Railroad to assume those responsibilities, the satisfaction or discharge of the obligations which were outstanding and had priority over the bonds of the old company. They did not furnish the Committee money to pay them off. They furnished it to the receiver. On January 4, 1927, when the deed was executed to the new company, the Coast Line handed me a check as receiver to cover those obligations, one million and some odd thousand dollars. They had already taken up all of the bank loans prior to that time, also the car trusts, except those local trusts, that is, the administration car trusts; they had taken that up, and they had taken up a loan from the Federal Government, a loan from a bank at Birmingham, and a loan from the National Bank of Com-
[fol. 751] merce in New York. The two bank loans and the Government loan were secured by that $825,000 issue of first and refunding bonds which have already been referred to. On January 4, 1927, the Atlantic Coast Line had already purchased these prior obligations in their own defense, and surrendered the evidence of payment of those obligations at that meeting. They surrendered them to me as receiver. It was at that meeting that the securities issued by the Atlanta, Birmingham & Coast were delivered to the Atlantic Coast Line Railroad Company, that is, the common stock. They paid nothing to the Atlanta, Birmingham & Coast Railroad Company. The A. B. & C., when it acquired this property, acquired it with a contract that those things should be paid off, and the method of paying them off, the means of paying them off, on January 4, 1927, had been

gotten into hand, and those things were on that date very largely cleared off. The things which were not cleared off were things which related to car trusts not yet due and to the items of administrative expense, receiver's administrative expenses, which were to be fixed items, and which under Exhibit "A" to the agreement of February 23, 1926, were not to exceed $600,000. As a result of the Atlantic Coast Line's action in buying in these obligations and in [fol. 752] giving me, as receiver, a check for the outstanding bills amounting to one million three hundred odd thousand dollars, and further giving me, as receiver, a letter that they would assume the responsibility for any additional obligations of the receiver that arose, the debts of the old company were discharged in that very act or transaction between the Atlantic Coast Line Railroad Company and the receiver of the railroad, and at that same meeting that property passed into the hands of the Atlanta, Birmingham & Coast Railroad Company. It is not true that, as a result of this transaction the Atlanta, Birmingham & Coast Railroad Company received a discharge or satisfaction of obligations against the property which it acquired, which were prior to the bonds of the old company. These obligations were discharged before the A. B. & C. Railroad Company received the property. I, as receiver, surrendered this property to the A. B. & C. Railroad Company upon the satisfaction of these obligations. There were equipment trust notes matured and un-matured, issued under equipment trust No. 3, dated January 15, 1920, by the Director General of Railroads for the Atlanta, Birmingham & Atlantic Railway Company, and with the Guaranty Trust Company of New York as trustee, of par value of $816,982.65, which were acquired by the Atlantic Coast Line Railroad Company shortly after this agreement was executed. That is the agreement of February 23, 1926, and prior to January 4, 1927. I do not want to be understood [fol. 753] as saying that that acquisition or purchase by the Atlantic Coast Line was a discharge of the obligations. The discharge was when they delivered those notes to me as receiver on the 4th day of January, before the Atlanta, Birmingham & Coast got the deed. They had to deliver this before giving the deed. There was a note dated December 20th, 1926, payable to the order of the Birmingham Trust & Savings Company, Birmingham, Ala., for $90,000, against

which there was first and refunding bonds as collateral to the extent of $125,000. They had acquired that note and those bonds. Then there was a note of B. L. Bugg, Receiver, A. B. & A. Railway Company, dated March 20, 1926, payable to the order of the Atlantic Coast Line Railroad Company for $235,311.96. That was an obligation given by the receiver under proper court order covering the purchase by the Atlantic Coast Line Railroad Company of past due notes of the receiver from the United States Government. On January 4th the Atlantic Coast Line Railroad Company handed to me, payable to my order as receiver, a check for $1,323,410.88 which was drawn to cover delinquent obligations of taxes amounting to $488,929.57, materials and supplies, all obligations of the company prior to the receivership, bills which were attached as a lien ahead of the bonds, $355,057; and the obligation of the receiver for bills amounting to $479,424.31. There was also an obligation to the National Bank of Commerce of $275,000, with interest, against which there was collateral of first [fol. 754] and refunding bonds amounting to $405,000. The Atlantic Coast Line Railroad at that meeting on January 4th handed to me in extinguishment of these debts the equipment trust notes, the first and refunding bonds that had been put up as collateral for bank loans which had been paid by the Atlantic Coast Line Railroad Company, the note of the receiver for $235,000—all as evidence of the extinguishment of these debts. I do not know whether the Atlanta, Birmingham & Coast received the discharge of the prior obligations. The prior obligations were satisfied through the surrender of these notes and bonds and by the delivery of this check for back taxes and outstanding bills amounting to about one million three hundred odd thousand dollars, and also the property which the A., B. & C. was acquiring, against which these obligations were liens.

(Direct examination continued:)

Messrs. Fowler and Roosevelt were acting as purchasers on behalf of the two bondholders' committees. We were in an office in the Chase National Bank at the time of closing this transaction. Mr. Warren, Mr. Hart, Mr. Fowler, Mr. Alston, Mr. Roosevelt, and probably some others, were present on behalf of that Committee. The papers, that is,

the shares of stock in the Atlanta, Birmingham & Coast, were all prepared for delivery to the Atlantic Coast Line Railroad Company. The cancellations which I have described as having been delivered by the Atlantic Coast Line were delivered in that meeting. The shares of stock were delivered at the same meeting. The common stock [fol. 755] was delivered at the same meeting. At the same time and either before or coincident with the delivery of this stock, this check for one million three hundred odd thousand dollars, to which I have referred, was also delivered. That was delivered to me in the presence of the gentlemen of the Bondholders' Committees and of Messrs. Fowler and Roosevelt. $1,323,000 was delivered to me for the purpose of discharging items referred to in Exhibit "A" to the agreement of February 23, 1926. All of those things were done, as I understood it, to the end that this Committee might deliver title unencumbered to the property now owned by the Atlanta, Birmingham & Coast Company, in performance of whatever everybody there conceived to be the obligations under the contract of February 23, 1926. The moneys which the Atlantic Coast Line paid them, plus the cancellations which have been referred to, did not quite balance off all the Atlantic Coast Line assumed, in that there were some unmatured obligations, some cars purchased, which it was not called on to pay at that time. The right was reserved to them in the decree that they could pay them or assume them. In the February agreement, the Atlantic Coast Line would pay or assume that, furnish the money to pay or assume the obligation of contracts outstanding and not matured. I can recall particularly who handed documents at that meeting which I have described. (Examiner Walton interrogated the witness.) I do not know that I can recall absolutely as to all who received documents. I think Fowler was representing the Atlanta, Birmingham & Coast and delivered the no-par [fol. 756] stock to Mr. Elliott. Mr. Elliott, representing the Atlantic Coast Line, delivered up the canceled evidence of obligations which we have been discussing. He delivered them to me as receiver. If there were a lien on the property, it undoubtedly would inure to the benefit of the seller, unless the buyer were buying it subject to the liens. I think I tried to make it clear that the obligations were satisfied before the conveyance by the surrender of these

documents and a check to the receiver. As to whether that was all done at one time—it followed pretty close one step on another. At the time of the meeting on January 4, 1927, the Atlantic Coast Line had acquired a substantial portion of these outstanding obligations. Those obligations were discharged by the surrender of the obligations themselves to the receiver, and I think it was at the same meeting that the Atlanta, Birmingham & Coast received a deed to the properties, and also issued its common stock. As to whether it also issued at that same time its preferred stock—I do not recall the particular reference to the preferred stock. That was to be distributed through the Bondholders' Committee to the depositors of the bonds, and I do not think that anything was said about that stock, in so far as the Atlantic Coast Line Railroad Company was concerned, at that meeting. I do not recall it. As to whether the Atlantic Coast Line agreed with some one else at that meeting to assume or discharge any further obligations which were [fol. 757] outstanding against the property—they gave me a letter, as receiver, agreeing to discharge any further obligations of the receiver that might arise. Those obligations had not matured and were not then canceled. The equipment trust notes were not canceled. There were liabilities of the receiver which had not been determined, contingent liabilities, and it was all of those that they obligated themselves to pay upon demand of the receiver. They did not pay those obligations subsequently. They paid them prior to that time or at that time. The outstanding equipment obligations were the ones which were outstanding. They were worth face value. They were not worth any more than that except interest. Face value and interest was all. That is what they were retired at. I do not see how the obligations which the Atlantic Coast Line had not taken up by January 4, 1927, but which it agreed at that time it would assume to pay, could possibly be worth more than their face value. In closing this transaction on January 4, 1927, the things which were done were done for the purpose of carrying out the contract of February 23, 1926, and the decree of the Court in reference thereto. It was understood that the Atlanta, Birmingham & Coast Railroad was to receive the title to this property from the sellers, that is, the Bondholders' Committee, represented by Messrs. Roosevelt and Fowler in this matter, freed from encum-

brance, except items not yet determined, and unmatured items determined.

[fol. 758] Examiner Walton: When did you first form the opinion that the properties now owned by the Atlanta, Birmingham & Coast Railroad Company were worth, for sale or exchange, as much as $24,000,000 as of January 1, 1927?

The Witness: I think I formed that opinion some time after June 30, 1914.

Examiner Walton: Can you fix it any more definitely than that?

The Witness: I had that opinion when the Commission made its report in Valuation Docket No. 1.

Mr. Davis: You mean you thought the valuation was not sufficient?

The Witness: I thought it was low.

Examiner Walton: Are you talking of value for sale or exchange now, Colonel Bugg?

The Witness: For any purpose that a railroad can be used.

Examiner Walton: Including the purpose of sale or exchange?

The Witness: Any purpose.

Examiner Walton: Did you entertain this opinion at the time that the property was sold at the foreclosure sale?

The Witness: I did.

I think the official bid for the property at the time of the last receivership and foreclosure was about four and a half million dollars. Under the terms of that bid, the bidder was to assume any other obligation than the payment [fol. 759] of 4½ million dollars. The debts had to be paid. That four and a half million dollars, I think, is just a paper bid, a paper price, set by the court, probably as an upset price.

Examiner Walton: Just roughly what were the debts to be paid by the bidder in addition to the four and a half million dollars?

The Witness: The bonds——

Examiner Walton: Aggregating some $9,000,000?

The Witness: About that, between nine and ten million dollars.

Examiner Walton: And other obligations aggregating some $4,000,000?

The Witness: Those were the current obligations.

Examiner Walton: And could the bid price be paid by surrender of bonds?

The Witness: Yes, sir, it could.

In any proceeding where the receiver had an interest, a direct interest, I was usually present. I do not think I was present at the time the court authorized a cash settlement for the non-assenting bondholders at the rate of $521.20 per thousand. If the property was actually worth for sale or exchange as much as $24,000,000 at that time, I would not say that such a settlement was wholly inadequate, so far as the non-assenting bondholders were concerned. As receiver, I represented only the Court. I was the arm and servant of the Court. I represented no one but [fol. 760] the Court. The stockholders maintained no activities. They made no appearance in the case, or undertook to exercise no influence in it whatever, until after this agreement of reorganization had been published. I said I was interested in seeing the bondholders get as much out of it as possible. There was no evidence of any equity for the stockholders. There was nothing that appeared, within any ground of reason at all, that they could get anything out of it. I do not recall from what individual or individuals the Atlanta, Birmingham & Coast received the deed to the railroad properties under discussion here. I do not know who physically handed it to a representative of the Atlanta, Birmingham & Coast. (Mr. Freer cross-examined the witness.) Mr. Fowler, whom I mentioned as one of the parties to whom the special master's deed was made, was with Cotton and Franklin in New York. I am not sure that he was one of counsel for the Atlanta, Birmingham & Coast Company at the time of its formation. The firm of Cotton and Franklin were counsel for the Protective Committee of income bondholders. I stated that Mr. Fowler was the party who handed the no-par stock to Mr. Elliott. Mr. Fowler was the party representing the Atlanta, Birmingham & Coast in that transaction at that meeting. I do not remember whether Mr. Roosevelt was at that meeting or not. Mr. Warren was there, who was Chairman of the Reorganization Committee, and Mr.

Fowler was there. I remember them. The Atlantic Coast [fol. 761] Line Railroad Company and, I think, the two protective committees jointly joined in the agreement of February 23, 1926. That was all. I think the agreement was between the Atlantic Coast Line and the two committees only, the two committees as one party. I think I answered once that I do not know just when the Atlanta, Birmingham & Coast got the guarantee of the Atlantic Coast Line on its preferred stock. I think it was on there when it was delivered on January 4, 1927. The items indicated in the column headed "Exhibit A" in Respondent's Exhibit No. 1 that had been acquired by the Atlantic Coast Line Railroad at or before January 4, 1927, were as follows: Birmingham Trust & Savings Bank loan of $114,000; National Bank of Commerce loan, $351,000; United States Government matured notes, $293,000; United States Government unmatured loan, $100,000; United States Government unmatured equipment notes, $655,000. The items in the column headed "Exhibit A" on Respondent's Exhibit No. 1 to be covered in the check of the Atlantic Coast Line Railroad Company to me, as receiver, for $1,323,000 plus were as follows: Taxes to December 31, 1925, $375,000, and material and supplies, $745,000. That Exhibit "A" was an estimate made by me of the delinquent obligations as of the latter part of 1925, about a year before this transaction was consummated, and at the time the estimates were made these figures were as nearly correct as could be determined. They were made only as estimates. At the time of the con- [fol. 762] summation of the transaction on January 4, 1927, a year had elapsed, and there had, of course, been a change of position in the ordinary conduct of business in every item. Some taxes had been paid and additional taxes had accrued, so that the taxes at January 4, 1927, instead of being $375,000 were $488,929,57. Material and supplies instead of being $745,000 were $834,481.31. The note of the Birmingham Trust and Savings Bank had remained at $90,000 but there had accrued additional interest. The United States Government matured notes, one of those was a car trust note and was lumped in with the United States Government unmatured equipment notes of $655.000, and amounted to $816,982.65, principal and interest. That is what the item amounted to, as I understand it, at the time those notes were acquired by the Atlantic Coast Line Railroad Company. The matured and unmatured loan

notes of the Government that were acquired by the Atlantic Coast Line Railroad Company amounting to $235,311.96. The note held by the National Bank of Commerce, estimated in the column headed "Exhibit A" of Respondent's Exhibit No. 1 at $351,000 at the time it was acquired by the Atlantic Coast Line Railroad amounted to $364,325.93. Now on all those items, as I understand our auditors, there had accrued interest to December 31, 1926. Whether the Atlantic Coast Line accrued interest on the payments which they made or not, I do not know. That will have to be determined from their books. I do not think the Atlantic [fol. 763] Coast Line settled some of these items for less than the amount which appears on the books of the Atlanta, Birmingham & Atlantic Railway Company at December 31, 1926. They sold everything at par value plus interest to date. If they settled an obligation and paid the interest to March, 1926, and we accrued interest on it to December 31, 1926, they would not have saved money. They were entitled to interest on it to December 31, 1926, but I do not know whether they have set up that interest in their cost of this property or not. I think they are entitled to do it. The figures which I show you as of January 10, labeled "Estimate of Colonel B. L. Bugg, January 10, 1927" on Respondent's Exhibit No. 2 were the amounts that I have just been talking about and were the accruals to December 31, 1926. Only the item of Receiver's equipment obligations in the amount of $519,500 plus interest of $25,089.48 was not acquired by the Atlantic Coast Line prior to January 4, 1927, or covered by its check of $1,323,410.88 given to me on January 4, 1927. I construe their letter to cover that item, although they were obligated in the contract to do it. It really was not necessary for them to give me the letter. Mr. Fowler had no connection whatever with the receivership. I do not know of any correspondence that Mr. Fowler had with the Commission. I do not know anything about the correspondence that Mr. Fowler had with the Commission.

(Whereupon, at 4.30 o'clock p. m., an adjournment was taken until Wednesday, July 13, 1932, at 10.00 o'clock a. m.)

[fol. 764] The hearing was resumed at 10 o'clock A. M., July 13, 1932, pursuant to adjournment, with appearances as heretofore noted.

B. L. Bugg, the witness on the stand at the time of taking the adjournment, resumed the witness stand and testified further as follows:

Cross-examination.

I have not refreshed my recollection concerning correspondence Mr. Fowler had with Mr. Wylie concerning the accounting of the Atlanta, Birmingham & Coast, only what I think you showed me yesterday. I was not engaged in any activities in the spring and summer of 1926 in connection with entries to be made on the books. I do not remember that there was any discussion of that subject at all before the organization of the new company, which was in the latter part of 1926, and so far as I was concerned I had no relation to it until January 4, 1927. I think Mr. J. A. Fowler, Jr., was Secretary of the Atlanta, Birmingham & Coast at the time of the organization and incorporation of that company in November, 1926. I think Mr. Fowler denominated himself counsel for the Atlanta, Birmingham & Coast in its adjoining in the application of the committee for authority to reorganize the A. B. & A. to acquire and operate its property. Up until January 4, 1927, at the time the directors I named yesterday were elected, Mr. Fowler and his associates were the sole ones who could [fol. 765] act for the Atlanta, Birmingham & Coast, after the organization in November, 1926. They were the officers and directors, and, of course, the only ones that could act after the organization of the corporation. I have what purports to be a copy of a letter to the Commission written by Cotton and Franklin, which was attached as Exhibit "F" to the application of the Atlanta, Birmingham & Coast for a certificate of public convenience and necessity and for authority to issue stock. I never saw the letter before until I saw it there in this record. I did not participate in any way in the organization of the Atlanta, Birmingham & Coast. I was receiver of the railroad, operating the railroad, and this reorganization was effected by the Bondholders' Committee, the purchasers or their counsel. There were very few angles of the transaction that I knew anything about or was consulted about at all. Cotton and Franklin were the attorneys for the Bondholders' Protective Committee for the income bonds. As to whether they were also attorneys for the Atlanta, Birmingham & Coast

from the date of its organization until January 4, 1927—they signed themselves as principal attorneys. Of course, there had to be attorneys to organize the company. They did not occupy such position, certainly, after January 4, 1927.

Redirect examination.

Q. Colonel Bugg, you testified on yesterday, as I recall it, that the Atlanta, Birmingham & Atlantic Railroad Company was organized on January 1, 1916, and the record [fol. 766] shows that it had a capital of $30,000,000 common stock and $4,090,000 of the old A. & B. bonds and $5,200,000 of income bonds. Please say whether or not that organization and capitalization had first to be approved by the Georgia Public Service Commission as being based upon sufficient value.

A. I understand that the Georgia law so requires.

I have described the terminal properties of the Atlanta, Birmingham & Coast Railroad Company at Atlanta and at Birmingham. Those properties are included in Account No. 701. In my opinion the value of those properties on January 1, 1927, was not less than six or eight million dollars. The steel and concrete bridges alone, at 1927 prices, were worth $2,166,378. Cross-ties in the track at current 1927 prices were worth $2,852,348. The rail, at relay and second hand price, with a suitable allowance for scrap and scrap prices was worth $2,016,524. The carrier land alone, exclusive of Atlanta and Birmingham, at normal values of January 1, 1927, was worth $1,779,709. My statement includes only the specific items which I have named. It includes no equipment. The equipment itself was valued at almost $3,000,000, and that is the depreciated value of the equipment. Setting that up at $6,700,000 would, I think, be entirely incongr-ous. This property had two kinds of value to the Atlantic Coast Line System in 1927. The year 1926 was a year of the heaviest railroad gross earnings known in the southeastern part of the United States, and probably in any other part of the United States. Possession of this property by [fol. 767] the Atlantic Coast Line could contribute to the holdings on the lines of the Atlantic Coast Line and its affiliated lines very valuable traffic connections long in existence. If those traffic connections were broken for any

cause, the Atlantic Coast Line, after the purchase, had the Atlanta, Birmingham & Coast Railroad to fill in those broken connections for its traffic out of and into Florida, both freight and passenger. The Atlantic Coast Line had then and has now about 2100 miles of line in Florida, and works in close cooperation with the Florida East Coast. If the Atlantic Coast Line should be without the control of the Atlanta, Birmingham & Coast, the great volume of the traffic out of that territory toward the West, then handled by the Atlantic Coast Line, would have been at the mercy of circumstances beyond its control. That should have been cured as quickly as possible. The control of the Atlanta, Birmingham & Coast does effectively cure it. The gross revenue of the Atlantic Coast Line Railroad in 1926 was about $96,000,000, and of the combined Atlantic Coast Line properties about $308,000,000. It was in the power of the Atlantic Coast Line Railroad and its affiliates to control or influence valuable traffic to the Atlanta, Birmingham & Coast on January 1, 1927. In my opinion they could have controlled or influenced the Atlanta, Birmingham & Coast traffic sufficient to have made the net income of the Atlanta, Birmingham & Coast 5-3/4 per cent. on more than the valuation now sought. Regarding whether on yesterday the [fol. 768] Examiner asked me in substance if there had been any change in the interchange of traffic between the Atlantic Coast Line and the Atlanta, Birmingham & Coast —the question, as I recall it, related to the change in volume or proportion, and my answer was that while there had been a change in volume, due to a general decrease of business, that I did not think there had been any material change in the proportion. In my opinion the reason there has been no increase in traffic to the Atlanta, Birmingham & Coast is because traffic relations of greater value have been preserved to the Atlantic Coast Line Railroad and its affiliated roads by the course pursued. Mr. Warren was Chairman of the Protective Committee and also Chairman of the Reorganization Committee. The latter committee was formed under the agreement of February 23, 1926, and I understand was formed for the purpose of carrying that agreement into effect. I think the transactions I have described as having taken place on January 4, 1927, in the office of the Chase National Bank in New York were for the purpose of carrying out the statement of Mr. Warren at

page 170 of the Supreme Court Record, namely: "Well, the securities of the new company are issued and exchanged for the properties of the old. There is preferred stock and common stock." I think that was the result of it. To separate and attribute to the various accounts and various items of property which go into Account 701 the $6,741,486.40, which Mr. Wylie undertook to attribute to Account 701 in his letter of August 30, 1927, it could only be done [fol. 769] on a basis of a break-down from the Bureau of Valuation figures, which would result in figures of units of about one-fifth of those values and of actual costs of property. That would not have any relation whatever to the actual facts. There has been a steady decline in traffic of practically all railroads in the southeast since 1927, and of the roads generally, perhaps, since 1927 or 1928—I mean the roads all over the United States—as a result of which there has been a great depreciation in the values of securities of all railroads. This chart headed "Revenues, expenses and net Railway Operating Income," while it shows some variation from year to year, it shows that each succeeding year since 1927, except 1928 and 1929, have been less than the year before. 1930 and 1931 and so far in 1932 are very much less. January 3, 1927, which was the first market day after January 1st, the price of Atlanta Coast Line stock was 202. All of these quotations are the same date. Atchison, Topeka & Santa Fe was 167½. I will go back to the Atlantic Coast Line again: On January 3rd, 1927, it was 202, and on the 11th of this month, July, 1932, it was 10. Atchison, Topeka & Santa Fe was 167½ on January 3rd, 1927, and on the 11th of this month it was 21⅜. Baltimore & Ohio was 107¼ on January 3, 1927, and 5¾ on July 11th, 1932. Chesapeake & Ohio was 161 on January 3, 1927, and 10⅜ on July 11, 1932. Louisville & Nashville was 130⅛ on January 3, 1927, and 10½ on July 11, 1932. Illinois Central [fol. 770] was 123 on January 3, 1927, and 6½ on July 11, 1932. Southern Railway was 125⅜ on January 3, 1927, and not quoted on July 11, 1932, the last quotation being about $3 per share. Pennsylvania Railroad was 56¾ on January 3, 1927, and 7⅜ on July 11, 1932. New York Central was 140⅝ on January 3, 1927, and 12 on July 11, 1932. Another railroad down in the southern country which has been spoken of as a competitor of the Atlantic Coast Line is in receivership.

Recross-examination.

It is the failure of the roads to earn income that affects the value of their securities in the market. The steady decline in the Southeastern railroads' earnings since 1926 ante-dating that of the other roads in general by a year or two, was, I think, due to the Florida slump. That collapse was during 1926. I think it was in the latter part of 1926. Maybe the decline in the railroad securities which I mentioned, including the Atlantic Coast Line and many others, ought to indicate an increase of rate-making values of those roads. Certainly it does not indicate any decline in rate-making values nor does it indicate any decline in the value of road and equipment. As to whether my opinion of the value of the Atlantic Coast Line is indicated to be greater or less on July 11, 1932, than on January 3, 1927,—I think it is just as valuable as a railroad property, more so to the extent of its improvements added since that time. I would not say my opinion of value was entirely regardless of the [fol. 771] earnings of the railroad. I am speaking now of the value in the property and not the decimal value of the securities. The earning power of the Atlantic Coast Line has fallen off from January 3, 1927, to July 11, 1932, has fallen off to a very large extent, the same as practically all other railroads. I would not say to a degree commensurate with the decline in the value of our stock, but a substantial decline. It may or may not be true that the only way the owners of a railroad realize upon their investment in that railroad is through the earnings available for dividends or interest. Regarding how they may realize otherwise—take the case of the Atlanta, Birmingham & Coast. I think the Atlantic Coast Line Railroad can realize a value from the ownership of that property, from a standpoint of protection to itself. I mean, by owning the property, it puts it in a better trading position with its connections and with its competitors. I mean it has the ever-present safeguard that it may instead of handling freight by some trunk lines in that neighborhood, or via its competitors, to route it over the Atlanta, Birmingham & Coast and create a new route to the West. The Atlantic Coast Line has not thought it proper to open a new route to the west via the rails of the Atlanta, Birmingham & Coast. It is not necessary to open any new route. It was already open when they acquired it,

and has continued open. I do not think that Mr. Edwards in his testimony indicated that the normal flow of the Florida traffic to the West, the Northwest, and to Kentucky and Western Virginia was over routes other than those embrac- [fol. 772] ing the rails of the Atlanta, Birmingham & Coast. What he spoke of was a flow of traffic over all these routes, many of these routes, or all of them, including the Atlanta, Birmingham & Coast. We had a great interchange with the Atlantic Coast Line Railroad before they acquired us, and it has continued since, that is, to the extent that the business was moving. I would say roughly about 25 per cent. of the traffic moving to territory open to the Atlanta, Birmingham & Coast Railroad was actually handled over the Atlanta, Birmingham & Coast. There are perhaps 6, 8 or perhaps 10 of such routes open. All of them perhaps use a part of the Atlantic Coast Line. There would be a small proportion which might move out entirely independent of any Atlantic Coast Line property. I spoke of the value of the terminal properties as of January 1, 1927, as not less than six or eight million dollars. I do not know whether the terminal properties could have been sold separately from the rest of the line. It is the connection of a railroad and the use for railroad purposes that enters into the value of those properties, their availability for railroad use. I think there are railroads which would have been glad to have those properties. Unfortunately, perhaps, they did not have the money to buy them. I did not explore that angle as receiver. I do not think the Bondholders' Committee explored the possibility of separating and selling the terminals. It might have been discussed, but I do not know of any effort which [fol. 773] was made to dispose of them that way. I did not inform the court that my idea of the value of this property was that it was much greater than the amount the court fixed as the upset price or the amount obtained from the property through the foreclosure sale. The court considered it, independent of any information from me. In speaking of the value of the steel and concrete bridges, it is not my idea that those bridges could have been removed and sold for two million and some odd thousand dollars for scrap. A bridge is of value only in position. I am valuing the bridge in position. That is a reproduction value which I have placed on it at January 1, 1927, figures. The figures I

have stated as to bridges, ties and rails are a part of the value entering into a railroad property, stating the sums to reproduce them in their then condition. They would bring only scrap if sold. They would have market or exchange value only as scrap used other than as bridges carrying tracks on a railroad. I am speaking now of bridges. I never abandoned any road in which any cross-ties were left. I abandoned several branches, and the cross-ties were gone. They were decayed. The property had not been maintained. I do not remember that I ever sold the land in the right of way on any of these abandoned branches. We might have sold some parcels of land, but I do not recall now. The land usually reverts when it is abandoned as a transportation facility. The railroad has only a right of way in it for railroad purposes. In the main, that is not true of the [fol. 774] station grounds in cities and towns. It depends on the title. If you have got a fee title, that is the end of it. As to how much of the lands in our terminal were consolidated plots and how much of them were right of way for single and double track between, say, Bessemer and Birmingham and between Atlanta and the outskirts of the yard and the terminal itself, I could not give you any definite figures on that point. In a general way, in entering a city, the land is purchased in lots, and extends beyond the designated right of way. Necessarily you can not go through and just buy a strip 50 or 100 feet wide. You buy lots You might sell or lease the part not needed for tracks to industries. I stated that some of the lands valued by the Commission, small lots or parcels, had been sold or leased subsequent to June 30, 1914. Regarding upon what basis I stated my value of $1,779,709 for the carrier land, exclusive of the Atlanta and Birmingham terminals—in valuation Section No. 1, which is Brunswick and vicinity, we have applied a factor of 1.59, as shown by the values established by the Atlantic Coast Line Railroad. On the rest of the line proper, that is, outside of Atlanta and Birmingham, we have applied a factor of 1.40, which is a figure determined by the Atlanta & West Point, based on rural properties in that section of the country. Those factors are applied to the Commission's value of the lines of the A. B. & A. as of June 30, 1914. As president of the Atlanta, Birmingham & Coast, I have not made efforts to get the Atlantic Coast Line to give us any large increase or any increase in

the amount of traffic routed over the Atlanta, Birmingham & Coast rails. I have not done so because I think they [fol. 775] know enough about their business to give it to the Atlanta, Birmingham & Coast when they determine it is to their advantage to do so. I am interested in making the best showing I can with it. I mentioned actual costs along with the Bureau of Valuation figures and values. Those are actual costs entered upon the records of additions and betterments to the property by the railroad itself. You take a piece of property added subsequent to June 30, 1914, and it is set up in the records at its actual cost. I was speaking of the A. B. & A. Railway. As to whether I know that Account 701 of the A. B. & A. Railway Company does not represent actual cost to it—as to the equipment, it was appraised at January 1, 1916, and brought over at an appraised value. I do not know how the road account 701 was determined. There are no figures to show the actual cost to the Atlanta, Birmingham & Coast. They acquired the properties as they existed at January 1, 1927, for their stock. There was nothing in that transaction to determine cost other than the cost that had already been set up on the books. I have never seen any quotation on the preferred stock of the Atlantic Coast Line Railroad Company. This six or eight million dollar figure which I have associated with the terminal properties is not to be added to my estimate of the value of the Atlanta, Birmingham & Coast properties, which I stated heretofore as not less than $24,000,000. The latter includes the former.

[fol. 776] Burton L. Bell thereupon recalled as a witness and, having been previously duly sworn, testified further as follows:

Direct examination.

By Mr. Davis:

Mr. Bell, beginning with the words: "If I took the Investment in Road and Equipment", on page 98, and continuing through the first line on page 99, there are some figures which do not seem to check in the transcript. Will

you give the way that portion of the record ought to read, giving the correct figures?

A. That part of the record you referred to should read as follows:

"If I took the Investment in Road and Equipment at $6,741,486.40, the figure set up by the Commission, and deducted from that the value of the equipment, it would leave us the value for the road only $3,741,710.35.

"The investment in equipment at December 31, 1926 was $4,306,660.73; the depreciation on equipment at that date was $1,306,884.68, leaving a net investment in equipment of $2,999,776.05; this latter sum to be subtracted from $6,741,486.40 leaves the amount for investment in Road, namely, $3,741,710.35.

Reconciliation of Difference between the Value shown for the No Par Common Stock at January 1, 1927, by Haskins & Sells proposed Opening Journal Entry dated June 7, [fol. 777] 1927, and that shown in Revised Proposed Balance Sheet (dated June 27, 1932) as of some date, submitted as Exhibit No. 10 by B. L. Bell, July 11, 1932:

For Account No. 751—Capital Stock—Common, No Par:

Haskins and Sells proposed Journal Entry shows $24,553,567.55. The revised balance sheet (Exhibit No. 10) shows $21,528,653.20, a decrease of $3,024,914.35.

That decrease is comprised of these differences:

Account No. 701, as shown by Haskins and Sells, was $29,471,859. The revised balance sheet shows $24,010,135.47, a decrease in Account No. 701—Investment in Road and Equipment of $5,461,723.53.

From the last named figure should be deducted the following items:

Account No. 775—Depreciation—Road, $611,232.78.

Account No. 776—Depreciation—Equipment, $1,306,884.68.

Account No. 755—Receiver's Equipment Trust Notes maturing after January 1, 1927, assumed by the Atlantic Coast Line, $322,500.00; interest thereon, assumed by the Atlantic Coast Line, $16,809.66.

Account No. 760—Vouchers Audited prior to January 1, 1927, and unpaid as of that date, assumed by the Atlantic Coast Line, $179,304.33.

[fol. 778] Account No. 711—Special Deposits collected from the Columbia Trust Company, $227.75; and there should be added, or shown in red in the same column "Farmers Loan & Trust Company $125"; Columbia Trust Company $25, an error in reimbursement of interest on equipment notes by the Atlantic Coast Line, accrued $11,905.76, and as paid $11,905.74, a difference of 2 cents.

The aggregate of those items to be deducted is $2,436,809.18, which amount deducted from the decrease in Account No. 701 of $5,461,723.53 will leave a net of $3,024,914.35, or the same figure as shown for the decrease in common capital stock, Account No. 751.

Examiner Walton: Mr. Bell, there are just one or two further questions.

The Witness: Yes, sir.

Examiner Walton: Will you look at transcript page 99, line 24?

The Witness: Yes, sir.

Examiner Walton: Being the next to the last line on that page.

The Witness: Yes, Sir.

Examiner Walton: And see if you did not intend to insert the word "not" after "only".

The Witness: "Not be helpful".

Examiner Walton: There should be the word "not" following?

The Witness: Yes, sir.

Examiner Walton: Now——

[fol. 779] Mr. Davis: So that the next to the last line on that page should read:

"* * * would not only not be helpful but they would be very far from——"?

The Witness: That is right.

Examiner Walton: Now if you will look at page 113, Line 3, I will ask you about that.

The Witness: Yes, sir.

Examiner Walton: As you recall that question, was the word "engine" used, and is that as you understood it from your answer?

The Witness: That should be corrected to read "entries."

While we are mentioning that, I notice another apparent typographical error on page 104, the first word on the seventh line, which should read "amended" instead of "mentioned".

Examiner Walton: Look at page 136, line one, and see if you intended to insert the word "not" after "worth"?

The Witness: "Worth not less than the net depreciated value".

Examiner Walton: The answer is "yes"?

The Witness: Yes, sir.

Examiner Walton: That is all.

Cross-examination.

Q. By whom was it determined, Mr. Bell, that the securities of the affiliated companies' miscellaneous physical prop-
[fol. 780] erty, current assets, and other items which you show on the proposed balance sheet were worth the sums set down for them?

A. I think the management indicated that to our late auditor, Mr. E. L. Green.

Q. To whom do you refer when you say "the management"?

A. I would assume that such direction came from our President, Col. B. L. Bugg.

I think they are the same figures that were brought over from the old balance sheet of the A. B. & A. as of December 31, 1926. I do not remember by whom it was determined that if any adjustment should be made to meet Director Wylie's position, that the entire scaling down should be done in Account No. 701—Investment in Road and Equipment. That matter would have been handled by Mr. Green at that time.

Exhibits Nos. 13 and 14, being letters between Mr. McCay and Mr. Wylie, introduced in evidence.

Also Exhibits 1–10 formally introduced in evidence.

[fol. 781] C. E. Boles thereupon was called as a witness and, having been first duly sworn, testified as follows:

Direct examination.

My name is C. E. Boles. I am Attorney-Examiner in Charge of Securities Section of the Bureau of Finance of

the Interstate Commerce Commission. I was educated in the public schools of Kentucky, at Liberty College, Glasgow, Ky., Bethel College, Russellville, Ky., from which I received the degree of A. B., and at Columbia University, New York City, from which I received the degree of LL.B. I have since received a certificate in higher accountancy from LaSalle Extension University of Chicago. I am a member of the Bar of the Kentucky Court of Appeals, the court of highest jurisdiction in that State, and have been admitted and qualified to practice before the Supreme Court of the United States. After graduating from college, I worked for about one year as a clerk in a bank at Glasgow, Ky., and taught mathematics in Texas high schools for about five years, before entering law school. After graduating from Columbia University, I was engaged in the general practice of law at Glasgow, Ky., for about three years, and in legal work in the office of the Solicitor of the Post-office Department for about one and one-half years. Thereafter I was an examiner in the Estate Tax Division of the Bureau of Internal Revenue of the Treasury Department [fol. 782] for about two years, and since about April 11, 1921, I have been an examiner in the Bureau of Finance of the Interstate Commerce Commission. During the first two years of my employment with the Bureau of Finance I was engaged in examining securities applications, developing the record in such cases, and writing reports and preparing orders to dispose of them. During the next three years I acted as Assistant to the examiner in charge of the Convenience and Necessity Section of the Bureau of Finance. My work consisted of examining applications for certificates of public convenience and necessity under Section 1 (18) of the Interstate Commerce Act, and applications under Section 5 (2) of the Act, involving acquisition of control of one carrier by another, of developing the record in such cases, and of writing reports and preparing certificates and orders disposing of them. During this period I performed the administrative duties of the examiner in charge of the section during his absence. Since September 1, 1926, I have been in charge of the Securities Section of the Bureau of Finance, having immediate supervision of the work of the Examiners who handle applications by carriers for authority to issue securities under Section 20a of the Act. In my work as Chief of the

Section of Securities it is necessary for me to consider the market value of securities. There have been very few sales of securities by the carriers during the year ended June 30, 1932. Prior to that time there were numerous sales. Since I have been in charge of the Securities Section of the Bureau of Finance, the Commission has authorized the sale [fol. 783] of bonds and equipment-trust obligations as follows:

Last	Bonds	Equipment-Trust Certificates
1926 (6 mo.)	$111,987,000	$18,761,000
1927	499,926,500	60,097,000
1928	351,235,000	33,525,000
1929	105,239,000	105,430,000
1930	675,073,000	100,328,000
1931	330,792,000	12,709,000

In addition it has authorized the issue of the stock in the following amounts:

	Equipment-Trust Certificates
1926 (last 6 mo.)	$26,646,960
1927	274,588,660
1928	337,337,810
1929	142,511,395
1930	422,283,527
1931	64,542,300

It has also authorized the issue of numerous obligations totaling several million dollars.

The figures covering the sales of bonds and equipment-trust obligations include all sales in lots of $100,000 or more. The figures covering the issue of stock include not only the amount of stock sold, but also the amount issued in payment for property, in exchange for other securities, in reorganization, and as a stock dividend. They do not include anything for no par stock.

[fol. 784] In the issue of stock we have rarely had to consider the price at which the stock would be sold. Generally speaking, it has been the practice of the Commission to provide in its orders authorizing the issue of stock that such stock shall be sold at par. Exceptions to this general practice will be found in Securities of Wichita Falls & Southern Railroad, 71 I. C. C. 694, Acquisition and Stock Issue by N. Y. C. & St. L. R. R., 79 I. C. C. 581, Securities

of Tennessee Central Ry., 105 I. C. C. 609, Stock of B. & O. R. R., 131 I. C. C. 27, Stock of Bangor & Aroostook R. R., 131 I. C. C. 93, and Stock of N. Y. C. & St. L. Railroad, 138 I. C. C. 324.

In two of the cases cited the carriers were permitted to sell preferred stock at less than par; in one case the carrier was permitted to sell treasury stock at the best price obtainable; in the other cases the carriers were authorized to sell stock at prices in excess of par.

The reason for requiring stock to be sold at par is generally to be found in the laws of the states under which the carriers were incorporated. While I have not examined the laws of all states on the subject, I have found that the laws of most states that I have had occasion to investigate require that stock shall be sold at par for cash, or its equivalent.

The concern of the Commission in authorizing the issue of stock has been that the stock when issued at par shall [fol. 785] represent an equal amount of actual investment in those assets only that have been provided and that are intended for continuing productive use in the service of transportation and that have not theretofore been capitalized by the issue of any securities. The amount of securities authorized has been based uniformly not on the value of the properties for rate-making purposes, but upon investment. Investment and present capitalization are the bases from which the Commission's examiners start in determining whether or not additional securities shall be issued. As a rule the carrier's book investment in capitalizable assets is accepted. Capitalizable assets as defined in numerous cases by the Commission consist of investment in road and equipment, deposits in lieu of mortgaged property sold, investment in stock and bonds of controlled companies, and working capital, in which miscellaneous physical property is sometimes included. If a carrier has an actual investment, for instance, of $1,500,000 and has outstanding only $1,000,000 of securities, there is an uncapitalized investment of $500,000 that can be used as a basis for the issue of additional securities which at par will not exceed the uncapitalized investment. Valuation figures are sometimes considered in limiting an issue. This was done in Finance Docket No. 6798, St. Louis-San Francisco Readjustment, 138 I. C. C. 505. Valuation figures represent the

maximum amount that may be considered in determining [fol. 786] the amount of securities to be issued. The amount to be issued is limited to actual investment if this is less than valuation for rate-making purposes. Securities should reflect the actual investment, a fixed amount, rather than something that is fluctuating from day to day. In authorizing the sale of bonds and equipment obligations, the Commission has not only been concerned in seeing that the par amount of the securities represent actual investment in capitalizable assets not theretofore capitalized, but that the consideration received for the securities is adequate. In every case consideration has been given to the adequacy of the price and in many cases the carriers have been able to obtain a better price from their bankers following objection by the Commission to the prices at which it was proposed to sell securities. In practically every case in which the price at which the securities were to be sold was questioned I was called upon for an expression of opinion as to the adequacy of the consideration.

In determining the adequacy of the consideration to be received for securities, resort is first had to the market quotations for previous issues of the same securities. If the securities to be sold are not listed, it has been necessary to resort to quotations for securities comparable with those to be issued. In making this comparison a study must be made not only of the term, interest rate, redemption pro- [fol. 787] visions, and other features of the securities and the lien of the instrument securing them, but also of the physical, income, and capitalization factors of the carrier.

The income factor is the most important. For instance, for a carrier's bonds to be classed as prima securities, its earnings over a period of years must be at least twice the amount of its fixed charge requirements. The trend of earnings is also important. Increasing earnings with prospects of a continued increase add to the strength of the securities. Physical and capitalization factors are important in judging whether the rate of earnings to fixed charges can be maintained or increased. Another factor to be considered is whether securities are legal investments for savings banks and similar institutions, with particular reference to the states in which they are legal. If they are legal for institutional investment in New York, Massachusetts, and Connecticut, this adds to their strength in that it gives

them a broader market for distribution. Call provisions are also of importance. The lien enjoyed by the securities must be considered. Some junior lien securities, however, are apparently equal in strength to securities of the same carrier having a senior lien, the facts in each case determining the importance of the lien factor. Guaranty of other companies must also be given consideration.

The foregoing applies particularly to the determination of the adequacy of the price to be received for bonds and similar securities. Many of the same general factors used [fol. 788] in testing the reasonableness of the consideration to be received for bonds, however, apply with equal force in determining the investment value of stock. Here, as in case of interest bearing securities, the most important factor is the income factor. What have been the earnings of the carrier over a period of years? What are its prospects? These are the all important questions in determining the value of stock. In speaking of value, I am speaking of market or exchange value. That is the only value considered in the issue of securities. It is the value referred to in the text of Account 41, "Cost of Road Purchased". You are dealing there with a purchase and the only value that can be considered is exchange value, which under the accounting rule is to be taken to represent investment. I have had experience other than that already referred to in determining the exchange or market value of railroad properties and of securities issued in payment for such properties. In my work in examining applications for certificates of public convenience and necessity under Section 1 (18) of the Interstate Commerce Act and applications under Section 5 (2) of the Act. Section (5) provides that "Whenever the Commission is of opinion, after hearing, upon application of any carrier or carriers engaged in the transportation of passengers or property subject to this Act, that the acquisition, to the extent indicated by the Commission, [fol. 789] by one of such carriers of the control of any other such carrier or carriers either under a lease or by the puchase of stock or in any other manner not involving the consolidation of such carriers into a single system for ownership and operation, will be in the public interest, the Commission shall have authority by order to approve and authorize such acquisition, under such rules and regulations and for such consideration and on such terms and condi-

tions as shall be found by the Commission to be just and reasonable in the premises." Here it is necessary to determine whether or not the consideration given in acquiring control of the properties is just and reasonable. The consideration usually given is a guaranty of dividends or interest under a lease, or a cash or other consideration where acquisition of control is by purchase of stock. Determination of the reasonableness of the consideration requires a study of the past and prospective traffic and earnings of the property to be acquired. One of the elements to be considered in issuing a certificate of public convenience and necessity for the construction of a new line of railroad or an extension of an existing line is whether the new construction or extension and the issuance of securities in payment therefor is justified by prospective earnings. Unless there is prospect of sufficient earnings to pay a return on the securities that will have to be issued to finance the new construction, it cannot be found to be in the public interest. A project that will not support itself will necessarily become a burden on interstate commerce. I have had other [fol. 790] experience in the valuation of securities. For two years as an Examiner in the Estate Tax Division of the Bureau of Internal Revenue, and as a member of the Board of Review of that Division I had to value for tax purposes securities forming a part of the decedents' estates. The assets of some of the estates examined included as many as 100 or 150 different securities, most of which were listed, but many of which were of close corporations. The value of all these securities had to be determined by the examiner handling the tax return and had to be O. K'd. by the Board of Review. I am familiar with the proceedings before the Commission in Finance Docket No. 5454, Reorganization and Control of Atlanta, Birmingham & Atlantic Railway Company, and in Finance Docket No. 5470, application of the Atlantic Coast Line Railroad Company for authority to acquire control of the Atlanta, Birmingham & Coast Railroad Company by purchase of capital stock, and to assume certain obligations. I am familiar with the Commission's order entered December 21, 1926, in the proceedings cited granting authority, among other things, for the Atlanta, Birmingham & Coast Railroad Company to issue not exceeding $5,180,344.07 of preferred capital stock and not exceeding 150,000 shares of common cap-

ital stock without nominal or par value subject to the condition that for the purpose of accounting, as provided in the classification of investment in road and equipment in [fol. 791] the text of Account 41, "Cost of Road Purchased", the cash value of the preferred stock issued must in stating the transactions in the accounts be recorded on a basis not in excess of its par value, and that the cash value of the common stock issued must be recorded on a basis not in excess of the amount received therefor. I am familiar with the text of the account referred to. The consideration given by the Atlanta, Birmingham & Coast for its properties was $5,180,300 of 5 per cent. preferred capital stock and 150,000 shares of common stock without par value. I have made a valuation of this consideration, in accordance with our usual method of determining the value of securities, as of January 1, 1927. I have determined that value to be not in excess of $9,395,075. That is a maximum and is represented by the par value of the preferred stock issued, $5,180,300, and the amount paid and to be paid by the Atlantic Coast Line for the common stock, $4,214,775. The evidence is that the Atlantic Coast Line has already expended $3,963,965 in acquiring the common stock and that there is a net determined item of around $250,810 that the Atlantic Coast Line has assumed and will pay in due course. It appears that the Atlantic Coast Line has paid about $33,513 for 384 shares of the total outstanding preferred stock, making its total investment in both preferred and common stock of the Atlanta, Birmingham & Coast Railroad Company $4,248,288, as shown by exhibits 1 and 2 [fol. 792] heretofore submitted in evidence. In fixing $9,359,075 as a maximum value of the stock I have given consideration to the history of the properties, to the efforts of the receiver and bondholders of the Atlanta, Birmingham & Atlantic to dispose of the properties, to the consideration paid for the securities under the agreement dated February 23, 1926, between the bondholders' committee and the Atlantic Coast Line whereby the properties were to be taken out of receivership and brought under control of the Atlantic Coast Line, to the past and prospective earnings of the properties, to the investment of the Atlanta, Birmingham & Atlantic in the properties following the first receivership, to the Commission's valuation of the properties for rate-making purposes, to the particular value of

the properties to the Atlantic Coast Line, and to such other elements as are usually taken into consideration in fixing the value of securities. The Atlanta, Birmingham & Atlantictic System had its origin in a group of short line lumber roads in South Georgia. The history of the development of the system will be found in the testimony of Mr. B. L. Bugg and Mr. C. McD. Davis given at a hearing held on May 20, 1926, before Examiner Davis at Atlanta, Ga., in the proceedings upon the application in Finance Dockets Nos. 5454 and 5470. Its history is briefly summarized in the report of the Commission accompanying its certificate and order of October 26, 1926, as follows:

[fol. 793] "A line extending to Tidewater at Brunswick, Ga., was acquired by the System in 1904, giving it a total of abount 338 miles. Lacking connections on the west, the traffic of the System was largely local, and about 1908 entrance was secured over constructed or leased tracks into Atlanta, Ga., and Birmingham, Ala., increasing the System to about 640 miles. Thereafter the A. B. & A. engaged in the handling of an important through traffic delivered and received at those points. The recital in the record gives the impression that the various extensions of the System were made to protect previous investments rather than in the development of a well-considered scheme to provide needed transportation facilities. As stated by witnesses, including the receiver, the inherent weakness of the A. B. & A. has been, and is, its lack of traffic. It was early in financial difficulties and went into the hands of a receiver in 1909 before it was completely in operation. This receivership continued until 1915." The properties were again placed in receivership in 1921, and continued in receivership until taken over by the Atlanta, Birmingham & Coast Railroad Company in 1927. As stated by one of the witnesses at the hearing held on May 20, 1926: "Of the 20 years that the railroad has been in existence it has been in receiverships more than 12 years, and under Government control and guaranty nearly 3 years, so that for practically [fol. 794] three-fourths of the entire time of its existence it has been under the protecting wing of a Federal court or of the Federal Government. Its inherent weakness is lack of traffic." Numerous efforts were made by the Atlanta, Birmingham & Atlantic Bondholders' Protective Committee to dispose of the properties before the agreement with

the Atlantic Coast Line was entered into on February 23, 1926. At one time the committee considered the possibility of scrapping the properties. They were approached by representatives of the Seaboard Air Line with whom negotiations were continued for some time; however, no definite offer that could be accepted or rejected was made by the Seaboard. The plan of that company was to give the bondholders of the Atlanta, Birmingham & Atlantic preferred stock or debentures par for par for their holdings, guaranteeing dividends or interest on the stock or debentures on a sliding scale and raising the cash requirements for reorganization through the issue of first mortgage bonds. The Bondholders' Committee was next approached by a Mr. Woodward who stated he represented some interests who would buy the bonds. He offered 40 cents on the dollar for the bonds and after several conferences the Bondholders' Committee agreed on a price of 45 cents tentatively, but the prospective purchaser was apparently unable to interest anyone in buying the bonds at that price. Some time in 1925 a Mr. Babage approached the Bond-
[fol. 795] holders' Committee stating that he represented certain interests who wanted to acquire the properties of the Atlanta, Birmingham & Atlantic. He stated that those he represented were responsible and were willing to put up $2,500,000 in cash, the bondholders to take $10 in cash on their bonds and $35 in new preferred stock and a small amount of common stock to be agreed on. Those he represented were to have about 75 or 85 per cent of the stock equity. Nothing came of these negotiations and it was subsequently revealed that the interest represented by Mr. Babage expected to turn the properties over to the Atlantic Coast Line. Efforts were made to locate the holders of large blocks of stock of the Atlanta, Birmingham & Atlantic and interest them in raising funds and participating in a reorganization of the company. Conferences were had with the Seaboard bank who represented some of the stockholders and also with a Mr. Payne who held a substantial amount of stock. After they looked into the situation and the figures they stated they did not see into the situation and the figures they stated they did not see that there was anything in it for the stockholders and did not want to run the risk of running up an expense by organizing a committee. Nothing came of these negotiations. The Chairman of

the Bondholders' Protective Committee talked the situation over with the Chase Securities Corporation, hoping they might figure out some way to get funds to lift the receivership, but that corporation after looking into the matter decided there was nothing in it that would justify the [fol. 796] offer of securities. Members of the Bondholders' Committee went over the railroad with the receiver and made a rather careful study of the situation, having in mind the possibility of perhaps selling an issue of bonds to the public and taking the road out of receivership, but after they had studied it further it appears to them that it would be a very unwise and risky thing to do as, judging from the past history of the property, it did not give much promise of future earnings. It was finally decided that the only thing that could be done was to go ahead and try to sell the properties and save whatever could be saved for the bondholders. About this time the committee was approached by Mr. Walters of the Atlantic Coast Line with the idea that that company might work out some plan by which it would take over the properties. After numerous conferences lasting several months the Bondholders' Committee and the Atlantic Coast Line finally came to an agreement, and entered into the written agreement dated February 23, 1926. The foregoing facts as to the efforts of the Bondholders' Committee to dispose of the properties will be found in the testimony of Mr. Gerge E. Warren, Chairman of the Reorganization Committee, given at the hearing at Atlanta on May 20, 1926, to which reference has been made above. Under the agreement dated February 23, 1926, between the Bondholders' Committee and the Atlantic Coast Line, a new company was to be organized to take over the properties under foreclosure. The new company was to have an authorized capi- [fol. 797] talization of $5,200,000 of preferred stock and 150,000 shares of no par common stock. The holders of the bonds of the Atlanta, Birmingham & Atlantic who assented to the plan of reorganization was to receive $60, par value, of preferred stock for each $100, par value of bonds. The Atlantic Coast Line was to receive the 150,000 shares of common stock in exchange for cash which it was to provide to pay off obligations of the receiver, receiver's and reorganization expenses, and all claims having priority over the mortgages of the Atlanta, Birmingham & Atlantic:

This was decidedly the best offer that the bondholders had received for their interests in the properties after negotiations apparently extending over several years. As to the claims of the bondholders against the properties, the court in its decree of foreclosure entered on April 30, 1926, found that there was due on the first mortgage bonds $4,090,000, principal and $1,146,269.18 interest, and on the income bonds $4,543,906.78 principal paid and $940,336.26 interest. The principal amount of both classes of bonds was $8,633,906.78, and total interest accrued on these bonds was $2,086,605.44, making the total claims of the bondholders against the properties $10,720,512.22. By paying off claims aggregating roughly $4,000,000, the bondholders themselves could have taken the properties out of receivership, thereby saving the total amount of their claims. The history and earnings of the properties were such, however, that they were unwilling to risk floating bonds to raise that amount of money in order to preserve an equity of over [fol. 798] $10,000,000. The stockholders of the Atlanta, Birmingham & Atlantic were unwilling even to participate in the reorganization. They considered that in view of the amount of the claims of the bondholders and of the claims prior to those of the bondholders, approximately $15,000,000 in all, there was nothing left for the stockholders. The offers proposed by the Seaboard and others were not as favorable as that of the Atlantic Coast Line. The cash payments made by the Atlantic Coast Line in acquiring control of the Atlanta, Birmingham & Coast, i. e., the amount paid by it in discharging the claims against the receiver, the claims having priority over the mortgages securing the bonds, etc., is to my mind the best measure of the value of the common stock issued by the Atlanta, Birmingham & Coast. It was in fact the consideration received for the common stock. It was the price paid by a willing buyer to a willing seller, and I know of no better test of market value than that. I have considered the value of the preferred stock given by the Atlanta, Birmingham & Coast. While no question has been raised as to value of the preferred stock in determining the cost of the properties of the Atlanta, Birmingham & Coast, the record shows that this stock had a market value of only about 88 per cent of par. Under the agreement of February 23, 1926, the holder of bonds of the Atlanta, Birmingham & Atlantic who did not

assent to the plan of reorganization and deposit his bonds thereunder was to receive in cash his pro rata distributive share as fixed by the court of the proceeds of the sale of [fol. 799] the properties and in so far as the holders of any of the bonds should not elect by assenting to the plan to take preferred stock of the new company in lieu of their respective distributive share to the proceeds of the sale of the properties, the preferred stock of the new company which would have been issued to such bondholders had they made such election was to be issued to the Atlantic Coast Line. Pursuant to these provisions of the agreement, out of the Atlantic Coast Line's $50,000 deposit paid into the court, $33,513 was used for distribution to non-assenting bondholders and the Atlantic Coast Line received for such payment the shares of preferred stock that would have gone to such bondholders had they assented to the plan, namely 384 shares. This indicates a market value of approximately $87.27 a share for the preferred stock. It also indicates that only about $4,520,848 instead of $5,180,300 as found by the Commission, was paid by the Atlanta, Birmingham & Coast in preferred stock for the properties. The guaranty of the Atlantic Coast Line was the only thing that made the preferred stock worth $87.27 a share. It placed the stock in the same class as a debenture of the Atlantic Coast Line, that is, a promise to pay without any security back of that promise. This obligation was of less value than the secured obligations of the Atlantic Coast Line. On December 31, 1926, the securities of the Atlantic Coast Line were selling as follows: First consolidated 4's–[fol. 800] 94⅛; 10-year secured 7's–105; general unified 4½'s–97½; L. & N. collateral gold 4's–92. These quotations indicate that a 5 per cent debenture of the Atlantic Coast Line should have sold on January 1, 1927, for about par. In other words, instead of guaranteeing the stock of the Atlanta, Birmingham & Coast the Atlantic Coast Line could have purchased the properties of the Atlanta, Birmingham & Atlantic outright free from all liens for less than $9,395,075 in cash. It could have acquired the properties direct for that amount without resort to the creation of a new corporation and the guaranty of the preferred stock of this new corporation. In my judgment, the amount paid by the Atlantic Coast Line to acquire control of the properties through the Atlanta, Birmingham & Coast was

just about all the properties were worth. It paid more than the Atlanta, Birmingham & Coast as an independent company could have afforded to pay. The reason for this is to be found in the past and prospective earnings of the properties as of the date of the transactions under consideration and in the peculiar needs of the Atlantic Coast Line. It is indicated further by the fact that the bid made for the properties by the representatives of the Bondholders' reorganization Committee was subject to the condition that it was to become final, effective, and binding only in the event the Interstate Commerce Commission authorized the Atlantic Coast Line to acquire control of the properties pursuant to its application in Finance Docket No. 5470 (Ct. Tr. 138). Answering the question as to what consideration I gave to the earnings of the properties for the years 1916 [fol. 801] to 1920 inclusive, the earnings of the Atlanta, Birmingham & Atlantic available for payment of interest and dividends were $1,801,488 less than nothing. In other words, there was a deficit of that amount in net railway operating income, an average of $360,297 a year, or almost $1,000 a day. The properties proved to be a liability rather than an asset, and in 1921 again were placed in receivership. During the years that the properties were in receivership, 1921 to 1926, inclusive, the deficit in net railway operating income aggregated $2,215,478, an average of $369,246 a year, or more than $1,000 a day. During the 11 years of its existence the Atlanta, Birmingham & Atlantic and its receiver had been losing money on operations at the rate of $1,000 a day. The record in the proceedings in Finance Dockets Nos. 5454 and 5470 show that if equipment had been properly maintained the loss from operations would have been greater. Whether there had been deferred maintenance in way of structures was not shown in the record in Finance Dockets Nos. 5454 and 5470, but the natural inference to be drawn from that record was that such was the case. The testimony of one of the witnesses in the present record indicates some deferred maintenance in way and structures. In only two years were there net earnings available for interest. In 1924 there was a net railway operating income of $107,719, and in 1926 there was a net railway operating income of $145,419. Assuming that the net railway operating income for 1926 could be

maintained, the properties from an earning standpoint, capitalizing earnings at 6 per cent, were worth only $2,423,- [fol. 802] 650,-and capitalizing earnings at 5 per cent were worth only $2,908,380. On the record of earnings it would have been very poor business for anyone to pay more than $3,000,000 for the properties unless there were reasonable prospects of considerable increase in earnings or unless the properties had some particular value *of* the purchaser other than as a plant that might in and of itself be profitably operated. For the properties to have been worth the amount paid for them by the Atlantic Coast Line, namely $9,395,075, assuming 5 per cent as an adequate return, the net railway operating income would have to average $469,-753.70 a year, and assuming 6 per cent as an adequate return, the net railway operating income would have to average $563,704.50 a year. The record in the proceeding in Finance Dockets Nos. 5454 and 5470 does not indicate the possibility of any great increase in traffic and earnings after affiliation with the Atlantic Coast Line. The record contains no estimates as to prospective traffic and earnings. The questionnaire sent out by the Commission for return in connection with the application of the Atlanta, Birmingham and Coast in Finance Docket No. 5454 requires that in case of new construction the applicant shall give an estimate of the character and volume of traffic expected, and the gross revenue to be derived therefrom covering each of the first five years following the completion of the new line of railroad, together with an estimate of annual revenues expected after the fifth year. It also requires the estimated total [fol. 803] gross revenues, operating expenses, net revenues, and net railway operating income corresponding with the estimates of traffic and gross revenues. In its return to the questionnaire the applicant answered that these questions were not deemed entirely applicable to its application. It contented itself with filing five statements giving for the 5-year period ended December 31, 1932, the predominating classes of revenue freight, a summary of freight traffic, a summary of passenger traffic, railway operating revenues, railway operating expenses, net revenue from railway operation, and net railway operating income. It evidently expected the Commission to find that the proposed acquisition and operation by it of the properties of the Atlanta, Birmingham & Atlantic would be in the pub-

lic interest regardless of what its future earnings might be. I have searched the record in vain for a statement as to prospective traffic and revenues. Testimony as to the traffic handled over the properties and as to the competitive situation of the properties did not indicate that much increase in traffic could be expected. The receiver stated that the inherent weakness of the road was lack of traffic; that when it was first built its principal traffic consisted of forest products, that is, lumber, cross ties, turpentine, and rosin; that timber had been very largely cut down, and a large part of the territory served was in a state of industrial [fol. 804] transition from lumbering to farming and that agriculture was making fair headway along the lines of general farming, but that the local territory of the railroad as a whole was still economically subnormal. He stated further that as a result there was not sufficient local traffic to support the railroad and that doubtless such traffic could not be secured for a good many years to come; that consequently it had been necessary to go far afield in search for and solicitation of other freight traffic, and that the most fruitful field of this traffic was to be found in Florida, both into and out of the State. He stated that had the development of Florida proceeded at a normal rate, it is conceivable that the Atlanta, Birmingham & Atlantic by its active solicitation, supported by a satisfactory service, might have continued to increase its freight traffic, but that this was possible only so long as its competition as an intermediate carrier was with routes not affiliated with the originating and delivering line in Florida. Florida lines, however, were becoming active in developing routes over their own lines which when completed would leave the Atlanta, Birmingham & Atlantic high and dry as a part of the through route. I considered the fact that the A. C. L. needed the A. B. & A. to bridge a gap in its rails and to protect its system. The acquisition of the Georgia Southern & Florida by the Southern Railway had given the latter a continuous route over its own rails into Florida. The Seaboard Air Line had made public announcement of its intention to provide a direct route over its own rails into [fol. 805] and out of Florida. The record shows that the Atlanta, Birmingham & Atlantic was in competition with nine other routes for traffic destined to the West and Southeast. It was stated that if the Atlanta, Birmingham & At-

lantic should fail to be included in the plans of some of the Florida lines it would be reduced to the level practically of a purely local railroad because it could not hope to complete successfully as an intermediate carrier against through routes under common ownership and control, and that to continue as an independent property undoubtedly meant recurring reorganization, receivership, and the eventual menace of being dismantled. The evidence is clear that as an independent property the railroad would continue a liability rather than an asset and that its market value as an independent property was little more than its value as scrap. What were the prospects of increasing traffic over the railroad after affiliation with the Atlantic Coast Line? The largest interchange of traffic was with that company and its affiliated companies. Its next largest interchange was with the Seaboard Air Line, which was contemplating providing a route of its own for through traffic. There was danger of losing the interchange with the Seaboard. The Atlantic Coast Line and its affiliated lines were doubtless already using the Atlanta, Birmingham & Atlantic's route for all traffic that could profitably be handled over it. The Atlanta, Birmingham & Atlantic was already receiving approximately 20 per cent of the total [fol. 806] movement of traffic destined to the West and Southeast. It was the second largest handler of this traffic, securing more even than the route through Montgomery in connection with the Atlantic Coast Line's affiliated line, the Louisville & Nashville. It could not be expected even after affiliation with the Atlantic Coast Line to increase to any great extent the percentage of this traffic. Total tons hauled by the Atlanta, Birmingham & Atlantic had increased from 1,071,856 in 1921, to 2,139,487 in 1925. The tonnage increased to 2,247,102 in 1926. This was after the Atlantic Coast Line entered into the agreement to acquire the properties. The greatest increase had taken place in 1922 and 1923. The tonnage in 1925 showed only a slight increase over 1924, and that in 1924 only a slight increase over that in 1923. The shopmen's strike had taken place in 1921, and the Florida boom was under way in 1923. The deflation in Florida was already under way in 1926, beginning soon after the Atlantic Coast Line entered into the agreement to acquire the properties. It was well under way at the time the Commission entered its order authoriz-

ing the Atlanta, Birmingham & Coast to issue its common and preferred stock. The receiver stated that prosperity in Florida had been an advantage to the railroad. A subsidence of business in Florida would naturally be expected to adversely affect the railroad. On the record as a whole prospects for further increase in traffic were not very bright. The Atlantic Coast Line was justified in paying the amount it did for the stock of the Atlanta, Birmingham & [fol. 807] Coast because the line was needed to round out the system of the Atlantic Coast Line, particularly for traffic between Florida and Atlanta and points beyond. The Atlantic Coast Line had its lines to the West and Northwest in connection with its affiliated lines through Montgomery and through Spartanburg. The line of the Atlanta, Birmingham & Atlantic afforded a more direct route and a more economical route for part of the traffic that could be handled over these other lines. The Seaboard Air Line had announced its plan of connecting up its Florida lines with Atlanta. The Atlantic Coast Line must acquire the Atlanta, Birmingham & Atlantic or otherwise provide a more direct route from Florida to Atlanta, to preserve its competitive status with the Seaboard Air Line. Another inducement for acquiring control of the properties was the possibility of holding to its own lines all traffic to and from points served by the Atlanta, Birmingham & Atlantic from and to points reached by the Atlantic Coast Line and its affiliated lines, and competitive territory beyond those points. Losses of the Atlanta, Birmingham & Atlantic in handling traffic might well be more than made up in operating savings and in profits to the Atlantic Coast Line and its other affiliated lines, or even by the Atlantic Coast Line holding to its system lines the traffic it then had, especially in face of improved service of its rival systems, the Southern and the Seaboard Air Lines. I considered the book investment or ledger values of the A. B. & A. Railway. [fol. 808] But little weight can be given to the book investment of the Atlanta, Birmingham & Atlantic in determining an exchange value of of its properties, and consequently the value of the stock issued in connection with the acquisition of those properties. The balance sheet of the Atlanta, Birmingham & Atlantic as of December 31, 1926, shows investment in road and equipment $38,596,400.62, total investments $40,294,970.13, current assets $1,369,933.26, deferred

assets $2,758, unadjusted debits $248,140.62, capital stock $30,000,000, long term debt $8,956,406.68, current liabilities $3,702.11, unadjusted credits $3,557,471.56, and corporate surplus deficit $3,914,049.01. The record shows that the Atlanta, Birmingham & Atlantic Railway Company was created as a result of the reorganization in 1915 of another company known as the Atlanta, Birmingham & Atlantic Railroad Company; and that in financing the reorganized company capital stock amounting to $30,000,000 was sold at a price of $12 a share, realizing $3,600,000, first mortgage bonds amounting to $4,090,000 were left undisturbed, and in addition 5 per cent income bonds and scrip in the amount of $4,543,906.78 were issued to holders of receiver's certificates. The total cost of the properties to the Atlanta, Birmingham & Atlantic Railway Company apparently was the aggregate of these three items, or $12,233,906.78. In accordance with the commission's accounting classification this amount should have been set up on the books of the Atlanta, Birmingham & Atlantic Railway Company as that [fol. 809] company's investment in the properties. Apparently the books should have shown discount on capital stock $26,400,000 and the balance sheet of the company as of December 31, 1926, should have reflected this discount, which would have required reducing total investment or other assets by that amount. Should the total amount be deducted from investment in road and equipment that account as of December 31, 1926, would show only $16,196,400 instead of $38,596,400. The difference appears to have been pure water. The record indicates, however, that even the actual investment made by the Atlanta, Birmingham & Atlantic in the properties was not justified as has already been indicated. According to market quotations the equity of the $30,000,000 of stock carried on the books of the Atlanta, Birmingham & Atlantic as of February 23, 1926, was $2,400,000, the stock being shown on that date at 8. If this be added to the indebtedness to the bondholders and to other prior indebtedness paid and to be paid by the Atlantic Coast Line, the total value of the properties at the time the Atlantic Coast Line entered into the agreement with the Atlanta, Birmingham & Coast as appraised by investors and speculators was about $17,120,000. That this was much too high was subsequently shown by the unwillingness of the stockholders or any one who might have acquired their

rights by purchasing their stock to bid for the properties at foreclosure an amount sufficient to pay the indebtedness of the railroad. The first tentative balance sheet of the [fol. 810] Atlanta, Birmingham & Coast Line Railroad Company as of January 1, 1927, shows investment in road $23,051,260, in equipment $4,306,660, and in general expenditures $2,113,939, making the total investment in road and equipment, as shown on the tentative balance sheet, $29,471,859. In setting up investment in road and general expenditures, the carrier used the cost of reproduction new as of June 30, 1914, as found by the Commission in its final valuation of the properties plus additions and betterments on road to December 31, 1926. Neither these figures nor those in the later balance sheets represent the investment of the Atlanta, Birmingham & Coast, nor do they represent the value of the consideration received for the common and preferred stock issued by the Atlanta, Birmingham & Coast. They represent merely the figure on which the Atlanta, Birmingham & Coast will be permitted to earn a return if it can produce the traffic to yield that return; nor do they represent the investment on which the Atlanta, Birmingham & Coast would be permitted to issue securities under Section 20a of the Interstate Commerce Act. There are few, if any, railroads in the United States today that based on present costs of stocks and bonds would have an exchange value as great as the Commission's valuation for rate-making purposes. At the time the Atlanta, Birmingham & Coast acquires the properties of the Atlanta, Birmingham & Atlantic there were only a few railroads in the United States, practically none that were [fol. 811] not in receivership, that could have been acquired through the purchase of their funded debt and stock for an amount no greater than the Commission's valuation. Market value or exchange value is determined by earning power past and prospective, and not by an inventory of *of* grading, ballast, ties, rails, bridges, equipment and such. No one would be so foolish as to invest $29,471,859 in reproducing the properties acquired by the Atlanta, Birmingham & Coast, and no one would have been so foolish as to invest more than one-third of the amount in the properties as they existed on January 1, 1927. In Account No. 41 "Cost of Road Purchased" we are dealing with actual cost, not theoretical reproduction cost new; and the actual cost

is figured in cash or its equivalent valued on a current cash basis. The thing required by the text of the account to be valued in the consideration given for the property not the property itself. It seems to be the position of the Atlanta, Birmingham & Coast that the consideration given for its properties was the preferred and common stock. The thing to be valued according to its position would be the preferred and common stock not the property. It is difficult to see, however, why it is necessary to value the common stock at all. The record seems clear that the consideration given by the Atlanta, Birmingham & Coast for the properties consisted of the preferred stock and the cash paid on its behalf by the Atlantic Coast Line. The Atlanta, Birmingham & Coast did not issue its common stock [fol. 812] in part consideration of the properties, nor did it receive any part of the properties in consideration of the issue of its common stock to the Atlantic Coast Line. The stock was issued to the Atlantic Coast Line in consideration of the payment by that company of the claim against the properties having priority over the claim of the bondholders. This was required by the agreement of February 23, 1926. The Atlantic Coast Line was to provide the new company with cash sufficient to pay off the claims against the properties and was to receive the 150,000 shares of stock in consideration of cash so provided. The properties were to be paid for in cash and with the outstanding bonds. The bonds were to be obtained by issuing in exchange therefor preferred stock of the new company. The same result would be reached if you consider the common and preferred stock issued for the property. Exactly the same valuation would be reached. The Atlanta, Birmingham & Coast made a report concerning the issue of its common stock to the Commission. Under date of January 10, 1927, the Atlanta, Birmingham & Coast filed a certificate of notification, Form B, as required by the Commission's order of February 19, 1927, instructions to carriers in relation to the issuance of securities, etc., under Section 20A of the Interstate Commerce Act, showing that it has issued the 150,000 shares of stock to the Atlantic Coast Line in accordance with the plan and agreement of reorganization for the payment of the Atlantic Coast Line of the [fol. 813] obligations listed in the certificate. The total amount of obligations given is $4,080,699.80, it being stated

that the figures are approximate, and may be amended or supplemented. This certificate was made by Mr. B. L. Bugg, under oath as required by the Commission's order of February 19, 1927. It shows conclusively that the common stock was issued to the Atlantic Coast Line in consideration of the payments made by the Coast Line on behalf of the Atlanta, Birmingham & Coast in acquiring the properties, and that these cash payments form a part of the consideration for the properties, received by the latter company. If I issue securities to pay for property, it makes little difference whether the purchaser of the securities applies the money required to be paid for the property directly or turns it over to me to buy the property. The condition imposed by the Commission as to the method of accounting to be followed in recording the transactions in Finance Dockets Nos. 5454 and 5470 was not a new or unusual condition. In a number of cases decided both before and after the decision in Finance Docket Nos. 5454 and 5470 the Commission has imposed a similar condition. In Acquisition and Operation of M. S. B. & P. R. R., 105 I. C. C. 99, the Muscle Shoals, Birmingham & Pensacola Railroad Company was authorized to acquire and operate a line of railroad formerly belonging to the Muscle Shoals, Birmingham & Pensacola Railway Company, and to issue not exceeding $305,000 of common stock in payment for the prop- [fol. 814] properties to be acquired. The St. Louis-San Francisco Railway Company was authorized at the same time to acquire control of the Muscle Shoals, Birmingham & Pensacola Railroad Company by purchase of capital stock. The Commission's certificate and order in that case were issued on November 14, 1925. The circumstances of that case were practically identical with those in the proceedings in Finance Dockets Nos. 5454 and 5470. Authority was sought to issue $2,500,000 of stock in payment for the property. The Commission has imposed a similar condition in the following cases:

Securities of Jacksonville & Havana Railroad, 101 I. C. C. 107.

Securities of Chicago, Springfield, & St. Louis Railway, 111 I. C. C. 116.

Acquisition by T. D. & W. R. R., 124 I. C. C. 181.

Acquisition by S. C. D. & P. Ry., 124 I. C. C. 355.

Acquisition by Smoky Mountain R. R., 124 I. C. C. 523.
Acquisition by J. G. & G. Ry., 124 I. C. C. 623.
Gainesville Midland Reorganization, 131 I. C. C. 355.
Acquisition by Southern Pacific Company, 131 I. C. C. 726.

Alton Railroad Company Acquisition and Stock Issue, 175 I. C. C. 301. The circumstances of the case last cited were practically identical with those in Finance Dockets Nos. 5454 and 5470.

A condition requiring that the cost of acquiring properties of affiliated companies be recorded on the books of the controlling company at actual cost was imposed in the following cases:

[fol. 815] Acquisition of Central New England Ry., 124 I. C. C. 165.
Acquisition of O. & C. R. R., 124 I. C. C. 614.
Acquisition by Missouri Pacific R. R., 131, I. C. C. 389.
Acquisition by Pittsburgh & W. V. Ry. Co., 150 I. C. C. 81.
Acquisition of Lines by Gulf, Mobile & Northern R. R. Co., 154 I. C. C. 479.
Colorado & Southern Ry. Co. Acquisition, 162 I. C. C. 190.
Chesapeake & O. Ry. Co. Acquisition, 162 I. C. C. 323.

It has not been the practice of the Commission to impose such conditions as I have mentioned in all similar cases. In many cases where it appeared from the record that the accounting proposed by the carrier was in harmony with the Commission's accounting classification, no condition was imposed. One such case was Control of K. C. M. & O. Railway Company of Texas, 154 I. C. C. 769. The Commission has in its so-called finance cases refused to accept its valuation figures for rate-making purposes as a proper basis for stating the investment of a carrier in properties formerly owned by another carrier. The Commission rejected as a basis for stating the investment of a carrier in properties so acquired, Cost of Reproduction New, in Acquisition of Control of B. & C. M. Ry. by M. R. Ry., 70 I. C. C. 328, and Acquisition by Missouri Pacific R. R., 131 I. C. C. 389. It rejected its tentative value of the properties to be acquired as a proper basis for stating the investment of the company acquiring them in Denver & Salt Lake Reorganization, 117 I. C. C. 397. It rejected, as a proper [fol. 816] basis for stating investment, data contained in

underlying valuation reports, in Securities of Jacksonville & Havana R. R., 111 I. C. C. 107, Securities of Chicago, Springfield & St. Louis Ry., 111 I. C. C. 116, and Acquisition by T. P. & M. R. R., 124 I. C. C. 181. The Commission has refused to accept as a proper basis for stating the investment of a carrier in properties acquired from another carrier the book investment of the other carrier in such poperties. In acquisition by Pittsburgh & W. Va. Ry. Co., 150 I. C. C. 81, book value of the properties to be acquired as reflected in the investment accounts of a subsidiary was rejected as a basis for statement of the parent company's investment in those properties because not in conformity with the requirements of the Commission's accounting classification. The practice in reorganization has been somewhat different from the practice in cases of acquisition by a new company of properties of an old company, where the security holders of the old company had no interest in the new company, that is, where control of the new company passed to someone other than the security holders of the old company. As a rule, new companies formed for the purpose of reorganization, where the holders of securities of the company reorganized were to become the holders of the securities of the new company, have been permitted to issue in exchange for outstanding securities and for additional cash new securities in an amount about equal to the outstanding securities. The primary consideration that seems to have moved the Commission in adopting and following this practice is that there is a scaling down of [fol. 817] the fixed interest charges or some other benefit to be brought about by the reorganization. In such cases the investment of the company being reorganized is carried forward to the books of the new company practically intact, or is scaled down to a figure not in excess of the Commission's finding of value for rate-making purposes. Examples of regular reorganization, where holders of securities of the old company continued their interest in the new company by accepting securities of the new company in exchange for the securities of the old company, and where control of the properties continued in the hands of the holders of the securities of the old company, and they were thus enabled to protect their equity in the property will be found in M. K. T. Reorganization, 76 I. C. C. 84, Reorganization and Extension of Georgia & Florida Ry.,

117 I. C. C. 473, and Chicago, Milwaukee & St. Paul Reorganization, 131 I. C. C. 673. In these cases the securities issued represented the equities of the holders of the old company's securities in the properties reorganized.

Cross-examination.

I have never been on the properties of the Atlanta, Birmingham & Coast.

Q. In determining the value of the securities issued by the Atlanta, Birmingham & Coast, what did you consider the value of the lands owned by the Atlanta, Birmingham & Coast in Atlanta and Birmingham?

A. I did not consider any of the value of any of the physical properties of the carrier, that is, separately and [fol. 818] apart and as separate items.

Q. Did you consider those values in any way?

A. I considered only the Commission's valuation of the properties as stated in its final valuation.

Q. Did you give any consideration to the great increase in values in 1927 over 1914 for all properties?

A. Nothing at all as to the increase in value of properties.

Q. Is it true that you have not attempted in your testimony to express any opinion as to the value of the properties of the Atlanta, Birmingham & Coast as distinguished from the securities issued by it?

A. I have not attempted to give any opinion as to the value of the properties for rate-making purposes.

Q. Have you placed any value on the properties as such, for any purpose?

A. I have placed a value on them, as evidenced by the securities, for exchange purposes only.

Q. Will you name any item of physical property on the Atlanta, Birmingham & Coast, as to which you reached a conclusion as to value, and tell us what the value is?

A. I did not reach any conclusion as to the value of the physical property on the Atlanta, Birmingham & Coast.

Q. Not the land, not the rails, not the equipment or physical property of any kind?

A. No, sir.

Q. You are an engineer, I take it?

A. No, I am not an engineer.

[fol. 819] Q. You have given no consideration to the cost of reproduction?

A. No, sir, except as stated in the Commission's final valuation.

Q. That is as of 1914?

A. That is as of 1914, yes, sir.

Q. Mr. Boles, in the issuance of securities by a railroad, do you consider the value of the properties back of those securities as having any bearing on the value of the securities themselves?

A. It is one of the elements that has to be taken into consideration, what they have got there.

Q. You did not consider that in this case, as I understood you to say?

A. I considered the valuation as fixed by the Commission.

Q. Without any attention to the values as of 1927, as to any physical property?

A. Not as to any physical property, no sir.

Q. Mr. Boles, it has been testified in this record that this transaction involving the Atlanta, Birmingham & Coast was completed in New York on January 4, 1927. Were you present at that meeting?

A. No, I was not.

Q. Have you any information as to what transpired at that meeting, other than you have referred to in your testimony?

A. Nothing except what is shown by the record in the proceedings in Finance Dockets Nos. 5454 and 5470.

[fol. 820] Q. Have you been present at this hearing during the testimony which has been given since Monday?

A. No, only for a few minutes one day. My whole opinion is based on the record as made in the proceedings in Docket Nos. 5454 and 5470.

Q. Mr. Boles, in your testimony you stated that you had determined the value to be $9,395,075?

A. Not in excess of that.

Q. Not in excess of that. As I understand that figure, it is the par value of the preferred stock, plus the amounts paid by the Atlantic Coast Line, in accordance with Exhibit A of the agreement of February 23, 1926. Is that correct?

A. That is correct.

Mr. Davis: Thank you very much. That is all.

Examiner Walton: Is there any redirect examination, Mr. Freer?

Redirect examination.

By Mr. Freer:

Q. Your reasons for the fixing of that maximum figure just embodied in Mr. Davis' last question were fully stated in your direct testimony, were they not, Mr. Boles?

A. They were.

Mr. Freer: I believe that is all.

Examiner Walton: Mr. Boles, do you want to be understood as saying that you have not expressed an opinion as to the worth of the properties of the Atlanta, Birmingham & Coast?

The Witness: No, sir.

Examiner Walton: Will you just indicate how you have [fol. 821] arrived at your opinion of the worth of those properties?

The Witness: That is fully set out in the direct testimony. There are a number of elements that were considered. Among those were the history of the property, the efforts of the bondholders of the Atlanta, Birmingham & Atlantic to dispose of the properties, the consideration paid for the securities under the agreement of February 23, 1926 between the Bondholders' Committee and the Atlantic Coast Line, the past and prospective earnings of the properties, the investment of the Atlanta, Birmingham & Atlantic in the properties followng the first receivership, the Commission's valuation of the properties for rate-making purposes, the particular value of the properties to the Atlantic Coast Line, and such other elements as are usually taken into consideration in fixing the value of properties for exchange purposes.

Mr. Freer: May I also suggest something else?

Examiner Walton: Yes, sir.

By Mr. Freer:

Q. Did you in your enumeration intend intentionally to omit the amount for which the Coast Line could have acquired the properties direct, without the intervention of a separate corporation?

A. That is one of the other elements to consider.

Q. Or the amount for which the bondholders could themselves have redeemed their property?

A. That is one of the other elements to consider.

Q. Your enumeration was not intended to be exclusive of those, but you just referred back to your direct testimony?

A. I referred back to my direct testimony, and in addi-
[fol. 822] tion to those elements which were enumerated you will find there were some other things taken into consideration.

Mr. Alston: Mr. Examiner, the last words of the witness' answer to your last question referred to certain general matters as taken into consideration in fixing the value of the securities—did you say?

The Witness: Value of securities or properties received for securities.

Mr. Alston: We think that that is very much too general, and we would like very much to know what those elements un-named were that he did consider.

Examiner Walton: You may inquire.

Recross-examination.

By Mr. Alston:

Q. Will you answer that question, if you please, Mr. Boles?

A. Those are set out in the direct testimony. They are not set out specifically, but among them were the market quotations of the common stock of the Atlanta, Birmingham & Atlantic at the time the Atlantic Coast Line entered into contract for acquiring the properties; the claims of the bondholders against the properties; the amount of cash they would have had to put up to take the properties out of receivership; the traffic prospects, which would be reflected in earnings; the amount paid by the Atlanta, Birmingham & Atlantic for the properties; the book investment of the Atlanta, Birmingham & Atlantic.

I am not sure whether that is all, but those are some of the things which you will find I considered in arriving at
[fol. 823] my opinion.

Mr. Alston: I think some of those you have mentioned heretofore.

By Mr. Davis:

Q. In Account No. 701 there are a number of sub-accounts referred to. I understand that you did not reach a conclusion as to value of any of those elements. Is that true?

A. I did not reach any conclusion as to the value of specific pieces of property for rate-making purposes. In other words, I did not try to go over the road and take the rails or ties or the quantity of excavation, or how much the land owned by it might be disposed of for other purposes, what the value of the land was as a going concern, or any of those things. I just took into consideration generally the Commission's finding of value of the properties, and weighed that along with all these other elements in arriving at what I considered the exchange value of the properties and the exchange value of the securities given in exchange for those properties.

Mr. Davis: Is there any difference between the exchange value of the property and the exchange value of all the securities?

The Witness: I do not think so.

Mr. Davis: That is all.

By Mr. Freer:

Q. You stated in your direct testimony, did you not, the reasons why you concluded that there was no difference between the exchange or market value of the securities given, and the exchange or market value of that which was [fol. 824] acquired with the properties in exchange therefor?

A. I did.

Mr. Davis: We repeat our motion to exclude the testimony of this witness, Mr. Examiner, on the ground that the witness has not attempted to value the physical property of the Atlanta, Birmingham & Coast, but has attempted to determine the value of something else.

Examiner Walton: The motion is denied.

(Whereupon, at 2.00 o'clock P. M., the hearing in the above entitled matter was adjourned until Monday, July 25, 1932.)

[fol. 825] Ball Room, Powhatan Hotel,

Washington, D. C.

Monday, July 25, 1932.

The hearing was resumed, pursuant to adjournment, at 3:00 o'clock p. m.

Before: Examiner Thomas D. Walton.

Appearances: The same as heretofore noted.

Proceedings

COLLOQUY

Examiner Walton: Let the record show that the hearing herein which, on July 13, 1932, was continued to 10 o'clock this date, was afterwards, by agreement, continued to 3 p. m. today.

You may proceed, Gentlemen.

Mr. Freer: Mr. Examiner, since the adjournment, counsel for the railroad companies and the Bureau of Accounts have agreed upon and signed a stipulation concerning the matters which may be deemed a part of this record, for the purposes of briefs, arguments and consideration by the Examiner and/or the Commission, as though the documents themselves were formally introduced in evidence, and we would like to offer it, as a joint exhibit.

Examiner Walton: Do you join in the offer, Mr. Davis?

Mr. Davis: Yes, subject to reservations which I would like to state in the record.

[fol. 826] Examiner Walton: The document last referred to will be marked joint Exhibit No. 15, and made of record herein, subject to the objection that Mr. Davis is about to state.

(The document referred to was thereupon received in evidence, marked Joint Exhibit No. 15, and the same is forwarded herewith.)

Examiner Walton: You may state the objection and reservation, Mr. Davis.

Mr. Davis: Mr. Examiner, as has been pointed out before in this record, this matter has been the subject of consideration before the United States District Court in the

Northern District of Georgia, in a proceeding brought by the Atlanta, Birmingham & Coast Railroad Company against the Interstate Commerce Commission of the United States of America. In that proceeding the Court rendered an opinion and entered an order, wherein it enjoined the use of the $9,000,000 figure there involved, and as we understand the matter, left for determination by the Commission only the question of value of property of the A. B. & C.

We object to the introduction in this case of any evidence not designed to show the value of that property.

We have agreed to a stipulation, as a matter of convenience, to avoid the necessity of physically incorporating into this record the matters referred to in the stipulation, but we object to the acceptance in evidence in this case of [fol. 827] any matter not designed to prove value of property of the A. B. & C.

As a matter of fact, the two companies which I represent, feel so certain as to their position that they would like to have this matter, if it be proper, made the subject of consideration by the Chief Examiner, and a ruling made in accordance with his consideration.

Examiner Walton: The matter has been considered by the Chief Valuation Examiner who approves and authorizes the ruling about to be made. The objections of the respondents last stated by Mr. Davis are overruled.

Mr. Davis: I believe it was indicated at the beginning of the hearing that it would be proper to ask that be allowed an exception in a case of this kind.

Examiner Walton: Yes, you may have an exception to the ruling.

Mr. Freer: Mr. Examiner, on transcript page 271, reference was made to Exhibit B in the testimony of Colonel Bugg, introduced at the hearing on February 4, 1929, in Finance Docket No. 5454.

In order that this present record may be complete, it occurs to me that we might enter into an oral stipulation, introducing this Exhibit B in evidence here, by reference, under Rule 13 of the Commission's Rules of Practice. It appears in the transcript of record in the Supreme Court of the United States, in the case of the United States and [fol. 828] Interstate Commerce Commission vs. the Atlanta, Birmingham & Coast Railroad Company, on record pages 161 and 162.

Examiner Walton: Do you join in the stipulation, Mr. Davis, that the document referred to by Mr. Freer may be considered a part of this record by reference under and subject to the provisions of Rule 13, Sub-section (b) of the Rules of Practice of the Commission?

Mr. Davis: Yes, sir.

Examiner Walton: It is therefore ordered that the document referred to be considered part of this record, by reference, as indicated.

Mr. Freer: Mr. Examiner, on transcript page 279, Mr. Davis made a statement concerning the issuance of the common and preferred stock, which was on transcript page 280, adopted by Colonel Bugg as part of his testimony.

I have talked with Mr. Davis about this matter and suggested to him that it might be well to amplify his statement made on transcript page 279, to the extent of telling us how many stock certificates were issues at the meeting of January 4, 1927, for the common and preferred stock, and I understand he has no objection to doing that.

Mr. Davis: Mr. Examiner, I think the fact is that there was issued one certificate for the preferred stock to the American Exchange Irving Trust Company, for account of Messrs. Hart, Warren, Perkins & Roosevelt, as the reorganization committee under the plan and agreement of reorganization dated February 23, 1926.

[fol. 829] Mr. Freer: That was done on January 4, 1927?

Mr. Davis: That was done on January 4, 1927. Subsequently, as I understand it, the reorganization committee made the distribution of the shares of preferred stock in accordance with the plan, and when the amount of non-assenting bonds had been determined, 384 shares of preferred stock were issued to the Atlantic Coast Line Railroad Company some time, I believe, in June of 1928.

As to the common stock, I think that in accordance with the plan, there was issued one certificate for 150,000 shares to the Atlantic Coast Line Railroad Company, and subsequently that certificate was broken up, so that there were issued one share apiece to each of the five directors, and a certificate for remaining shares to Atlantic Coast Line Railroad.

Mr. Freer: That is, one certificate was to the Atlantic Coast Line, and it was also issued January 4, 1927?

Mr. Davis: Yes; that is my understanding.

Mr. Freer: Mr. Examiner, we would like also at this time to introduce in evidence a copy of the deed dated January 1, 1927, from George E. Roosevelt and J. A. Fowler, Jr., parties of the first part and Julia a Roosevelt, wife of said George E. Roosevelt, and Hilleda Fowler, wife of J. A. Fowler, Jr., part- of the second part, to the Atlanta, Birmingham & Coast Railroad Company, party of the third part.

This deed I requested of Mr. Davis, and he has produced [fol. 830] for me two copies, which Mr. Davis will state are true copies of the original deed, and I offer this deed in evidence herein, and I understand Mr. Davis will waive the production of any witness through whom to offer the deed and will waive any further authentication of it as a correct copy of the original.

Mr. Davis: I have no objection to make in permitting the waivers to which Mr. Freer has referred. We have the same general objection to the deed, that it does not affect value of the property relating thereto.

Examiner Walton: The document last referred to will be marked Bureau's Exhibit No. 16.

Do you state, Mr. Davis, that this proposed exhibit is a true copy of the deed which it purports to be?

Mr. Davis: I think it is, yes, sir.

Examiner Walton: The objection of the respondents to the reception in evidence of the Bureau's proposed Exhibit 16 is overruled and said exhibit is received in evidence.

(The document referred to was received in evidence, marked Bureau's Exhibit No. 16, and is forwarded herewith

Mr. Davis: We ask to note the same exception.

Mr. Freer: Mr. Examiner, during the cross-examination of Colonel Bugg, reference was made to two letters from Cotton & Franklin, signed by Mr. J. A. Fowler, Jr., and addressed to Director Wylie, of the Commission's Bureau of Accounts.

[fol. 831] In order to complete the record, I would like to offer in evidence now a letter from Director Wylie, Commission's Bureau of Accounts, addressed to Mr. Fowler, under date of August 17, 1926, and the two replies to that letter, one dated August 18, 1926, on the letterhead of Cotton & Franklin, signed J. A. Fowler, Jr., and the other of August 24, 1926, on similar letterhead and similarly signed.

Examiner Walton: The documents last referred to will be marked Bureau's Exhibits Nos. 17, 18 and 19, respectively, as follows: The letter of August 17, 1926, Bureau's Exhibit No. 17; that of August 18, 1926, Bureau Exhibit No. 18, and that of August 24, 1926, Bureau Exhibit No. 19.

Is there any objection to the offer, Mr. Davis?

Mr. Davis: Mr. Examiner, we have no objection at all to the method or to the failure of authentication. We would like to call attention to the fact that these letters dated after the argument was had before the Interstate Commerce Commission in Finance Docket 5454, and before the first report of the Commission, in which report it was stated that the matter of the accounting had not been given consideration —our position is that this question really begins with a letter from Mr. Wylie to the Atlanta, Birmingham & Coast, in 1927, which is an exhibit with a supplementary application of Atlanta, Birmingham & Coast, which has been identified in this record. We also have the same general objections we have referred to with reference to the other papers.

[fol. 832] Examiner Walton: The objection is overruled, and the Bureau's proposed Exhibits 17, 18 and 19 are received in evidence.

(The documents referred to were received in evidence, marked Bureau's Exhibits Nos. 17, 18 and 19, and are forwarded herewith.)

Mr. Davis: We would like to have an exception noted, Mr. Examiner.

Examiner Walton: Mr. Davis, the respondents have indicated heretofore to the Examiner that they would like to have proposed report procedure adopted in this case. Are the respondents still of that opinion?

Mr. Davis: Yes, sir.

Examiner Walton: What is the position of the Bureau of Accounts, Mr. Freer?

Mr. Freer: This case is on the Commission's general docket, and I had assumed, Mr. Examiner, that the proposed report procedure would be followed. I have no recommendation to make and do not have any preference in the matter.

Examiner Walton: It is true that this case would ordinarily be a proposed report case, there having been no

designation in the notice setting it for hearing that it would not be. Accordingly proposed report procedure is adopted herein.

The respondents and the Bureau of Accounts may have to and including the 19th day of September, 1932, within which to serve and file briefs herein.

Is there anything further from the respondents to come [fol. 833] before the Examiner at this time, Mr. Davis?

Mr. Davis: Nothing further.

Examiner Walton: Is there anything from the Bureau of Accounts, Mr. Freer?

Mr. Freer: Nothing further.

Examiner Walton: There being nothing further to come before the Examiner at this time, the hearing is closed.

(Thereupon, at 3.35 o'clock p. m., the hearing was closed.)

(Here follow tables, side folios 834 and 835.)

[fol. 834] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 6-10-32. Exhibit No. 1. Witness Darden. Reporter K. J.

EXHIBIT 1

Atlantic Coast Line Railroad Company

Analysis of payments made by and for A. C. L. R. R. Co. in acquiring stock of the A. B. & C. Ry. with Exhibit "A" of Agreement with Bondholders Committee, dated February 23, 1926

	Exhibit "A"			Paid by A. C. L. R. R. Co. to June 7, 1932	Paid by A. B. & C. Ry.	Total Payments to June 7, 1932
Taxes to December 31, 1925	$375,600.00	Back taxes	$501,291.71			
		Interest on back taxes	53,048.70	$554,340.41		
Material and Supplies	745,000.00	Material and Supplies		1,009,976.76		
Birmingham Trust & Saving Bank loan	114,000.00	Note, Birmingham T. & S. Co.	$116,904.48			
		Interest	4,490.52	121,395.00		
National Bank of Commerce loan	351,000.00	Purchase of First & Refunding 5% Bonds	$364,325.93			
		Interest	18,884.22	383,210.15		
United States Government matured notes	293,000.00	Equipment Trust Notes	$816,982.65			
United States Government unmatured loan	100,000.00	Note, B. L. Bugg, Receiver	235,311.96			
United States Government unmatured equipment notes	655,000.00	Interest	8,823.19			
		Insurance	19.50	1,061,137.30		
	1048					
Unmatured notes for rebuilding equipment	444,500.00	Equipment Obligations (Suspense)	$55,202.99			
		Interest	30,146.81	85,349.80	$267,297.01	
Receivership, reorganization and miscellaneous expenses and allowances	600,000.00	Receivership expenses	$600,006.00			
		Less refund	4,963.63	595,036.37		
		Miscellaneous expenses		16,379.82		
		Claims paid by Receiver		120,651.80		
		Amount deposited with Reorganization Committee to pay non-assenting bondholders		50,000.00		
		Less refund			16,486.84	
Totals	$3,677,500.00			$3,997,477.41	$250,810.17	$4,248,287.58

Wilmington, N. C., June 7th, 1932-1.

[fol. 835] [Stamp:] Interstate Commerce Commission Docket No. 25170. Date 6-10-32. Exhibit No. 2. Witness Darden. Reporter K. J.

EXHIBIT 2

Atlantic Coast Line Railroad Company

Reconciliation of Payments made by and for A. C. L. R. R. Co. in connection with acquiring stock of A. B. & C. Ry., with estimated obligations of A. C. L. R. R. Co. as stated by Colonel Bugg in his certificate to Interstate Commerce Commission, January 10, 1927

		Estimate of Colonel B. L. Bugg, Jan. 10, 1927			Paid by A. C. L. R. R. Co. to June 7, 1932	Paid by A. B. & C. Ry.	Total Payments to June 7, 1932
Cash advanced to Receiver by A. C. L. R. R. Co., Jan. 4, 1927		$1,323,410.88	Back taxes	$488,929.57			
			Material and supplies	834,481.31	$1,323,410.88		
Equipment Trust Notes	$816,982.65		Equipment Trust Notes		816,982.65		
Interest	46,976.49						
		863,959.14					
Receivership expenses		600,000.00	Receivership expenses	$600,000.00			
			Unexpended balance refunded	4,963.63			
					595,036.37		
Note, Birmingham Trust & Saving Co.:							
Principal	$90,000.00		Note, B. T. & S. Co. and Collateral	$116,904.48			
Interest	31,395.00		Interest	4,490.52			
		121,395.00			121,395.00		
Note, B. L. Bugg, Receiver	$235,311.96		Note, B. L. Bugg	$235,311.96			
Interest	8,823.19		Insurance fee	19.50			
		244,135.15	Interest	8,823.19			
					244,154.65		
Purchase of First & Refunding 5% Bonds	$364,325.93		Purchase of First & Refunding 5% Bonds	$364,325.93			
Interest	18,884.22		Interest	18,884.22			
		383,210.15			383,210.15		
Receivers Equipment Obligations	$519,500.00		Equipment Obligations—Suspense	$55,202.99		$267,297.01	
Interest	25,089.48		Interest on Equipment Obligations	30,146.81			
		544,589.48			85,349.80		
			Miscellaneous Expenses		16,379.82		
			Amount deposited with Reorganization Committee to pay non-assenting bondholders		50,000.00		
			Less refund			16,486.84	
			Back taxes	$12,362.14			
			Interest on back taxes	53,048.70			
			Material and supplies	175,495.45			
			Claims paid by Receiver	120,651.80	361,558.09		
Totals		$4,080,699.80			$3,997,477.41	$250,810.17	$4,248,287.58

Wilmington, N. C., June 7th, 1932-1.

[Fol. 836] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 6-11-32. Resp. Exhibit No. 3. Witness Bell. Reporter Farrell

EXHIBIT 3

Atlanta, Birmingham & Atlantic Railroad Company

Balance Sheet at December 31, 1915, for Annual Report—Year 1915

I. C. C. Schedule 200-A

Asset side

B, L. Bell—#3

Jan. 31, 1915	Items:	Dec. 31, 1915	Increase or Decrease
	Investments:		
52,173,289.29	701. Investment in Road and Equipment	52,197,059.97	23,770.68
38,291.25	705. Miscellaneous Physical Property	30,740.79	7,550.46
4,500,000.00	706. Investment in Affiliated Companies (A) Stocks	4,500,000.00	.....
.....	(B) Bonds	.....	.....
.....	(C) Notes	.....	.....
208,678.22	(D) Advances	210,263.18	1,584.96
5,000.00	707. Other Investments (A) Stocks	5,000.00	.....
.....	(C) Notes	6,502.42	6,502.42
.....	(E) Miscellaneous	2,500.00	2,500.00
56,925,258.76	Total Investments	56,952,066.36	26,807.60
	Current Assets:		
225,429.59	708. Cash	281,234.53	55,804.94
4,853.03	711. Special Deposits	127,690.53	122,837.50
.....	712. Loans and Bills Receivable	95.76	95.76
56,479.32	713. Traffic & Car Service Balances Receivable	93,948.63	37,469.31
35,345.35	714. Net Balance Receivable from Agents & Conductors	108.29	35,237.06
427,116.10	715. Miscellaneous Accounts Receivable	279,499.76	147,616.34
258,980.25	716. Material and Supplies	283,598.84	24,618.59
834.82	717. Interest and Dividends Receivable	1,123.78	288.96
1,009,038.46	Total Current Assets	1,067,300.12	58,261.66

EXHIBIT 3—Continued

I. C. C. Schedule 200-A—Continued

		B. L. Bell—#3—Continued	
	Deferred Assets:		
690.39	720. Working Fund Advances	519.39	171.00
4,890.21	722. Other Deferred Assets	6,240.43	1,350.22
5,580.60	Total Deferred Assets	6,759.82	5,853.84
	Unadjusted Debits:		
.....	723. Rents and Insurance Premiums Paid in Advance	5,853.84	5,853.84
5,291,876.92	727. Other Unadjusted Debits	5,588,277.38	296,400.46
5,291,876.92	Total Unadjusted Debits	5,594,131.22	302,254.30
63,231,754.74	Grand Total Assets	63,620,257.52	388,502.78

[fol. 837]

Atlanta, Birmingham & Atlantic Railroad Company

Balance Sheet at December 31, 1915, for Annual Report—Year 1915

I. C. C. Schedule 200-A

Liability Side Items: Jan. 31, 1915		B. L. Bell—#1 Dec. 31, 1915	Increase or Decrease
	Stock:		
34,987,100.00	751. Capital Stock	34,987,100.00	.....
34,987,100.00	Total Stock	34,987,100.00	.....
	Long Term Debt:		
19,168,906.53	755. Funded Debt Unmatured	19,005,407.78	163,498.75
4,994,000.00	756. Receiver's Certificates	4,994,000.00	.....
1,661,250.00	757. Non-negotiable Debt to Affiliated Companies (B) Open Accounts	1,797,375.00	136,125.00
25,824,156.53	Total Long Term Debt	25,796,782.78	27,373.75

		Current Liabilities:		
309,530.02	758.	Loans and Bills Payable	382,036.15	72,506.13
85,313.02	759.	Traffic and Car Service Balances Payable	95,783.77	10,470.75
244,886.92	760.	Audited Accounts and Wages Payable	322,501.48	77,614.56
953,865.22	761.	Miscellaneous Accounts Payable	950,259.65	3,605.57
4,969,391.67	762.	Interest Matured Unpaid	5,359,507.44	390,115.77
498,000.00	764.	Funded Debt Matured Unpaid	644,000.00	146,000.00
1,589.83	766.	Unmatured Interest Accrued	1,156.16	433.67
168.50	767.	Unmatured Rents Accrued	198.00	29.50
947.49	768.	Other Current Liabilities	3,007.74	2,060.25
7,063,692.67		Total Current Liabilities	7,758,450.39	694,757.72
		Deferred Liabilities:		
6,989.75	770.	Other Deferred Liabilities		6,989.75
6,989.75		Total Deferred Liabilities		6,989.75
		Unadjusted Credits:		
74,647.85	771.	Tax Liability	1,172.32	75,820.17
546,446.63	776.	Accrued Depreciation-Equipment	556,136.99	9,690.36
418,780.31	778.	Other Unadjusted Credits	606,763.31	187,983.00
1,039,874.79		Total Unadjusted Credits	1,161,727.98	121,853.19
		Corporate Surplus:		
5,690,059.00	784.	Profit and Loss	6,083,803.63	393,744.63
5,690,059.00		Total Corporate Surplus	6,083,803.63	393,744.63
63,231,754.74		Grand Total Liabilities	63,620,257.52	388,502.78

[fol. 838] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 6-11-32. Resp. Exhibit No. 4. Witness Bell. Reporter Farrell

EXHIBIT 4

Georgia Terminal Company
E. T. Lamb, Receiver
Balance Sheet at December 31, 1915, for Annual Report—Year 1915
I. C. C. Schedule 200-L

B. L. Bell—#4

Liability Side June 30, 1915	Items:	(b1) Total book liability at close of year	Dec. 31, 1915	Increase or decrease
	Stock:			
1,500,000.00	751. Capital Stock	1,500,000.00	1,500,000.00	.....
1,500,000.00	Total Stock		1,500,000.00	.....
	Long Term Debt:			
3,004,071.94	755. Funded Debt Unmatured	3,003,778.34	3,003,778.34	293.60
103,320.01	757. Nonnegotiable Debt to Affiliated Companies (B) Open Accounts		104,716.01	1,396.00
3,107,391.95	Total Long Term Debt		3,108,494.35	1,102.40
	Current Liabilities:			
1,195,318.45	762. Interest matured unpaid		1,270,318.45	75,000.00
79,670.07	768. Other Current Liabilities		79,670.07	.....
1,274,988.52	Total Current Liabilities		1,349,988.52	75,000.00
	Corporate Surplus:			
1,945.06	784. Profit and Loss—Debit Balance		2,245.75	300.69
1,945.06	Total Corporate Surplus		2,245.75	300.69
5,880,435.41	Grand Total Liabilities		5,956,237.12	75,801.71

[fol. 839]

Georgia Terminal Company

E. T. Lamb, Receiver

Balance Sheet at December 31, 1915, for Annual Report—Year 1915

I. C. C. Schedule 200-A

B. L. Bell #2

Asset Side June 30, 1915	Items:	Dec. 31, 1915	Increase or decrease
	Investments:		
4,829,069.35	701. Investment in Road and Equipment	4,831,113.06	2,043.71
4,829,069.35	Total Investments	4,831,113.06	2,043.71
	Current Assets:		
124.06	708. Cash	124.06	.....
1,051,242.00	715. Rents Receivable	1,125,000.00	73,758.00
1,051,366.06	Total Current Assets	1,125,124.06	73,758.00
5,880,435.41	Grand Total Assets	5,956,237.12	75,801.71

[fol. 840] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 6-11-32. Resp. Exhibit No. 5. Witness Bell. Reporter Farrell

EXHIBIT 5

Alabama Terminal Railroad Company
E. T. Lamb, Receiver
Balance Sheet at December 31, 1915, for Annual Report—Year 1915
I. C. C. Schedule 200-A

B. L. Bell—#5

Asset Side June 30, 1915	Items:	Dec. 31, 1915	Increase or decrease
	Investments:		
5,790,913.02	701. Investment in Road and Equipment	5,791,226.98	313.96
5,790,913.02	Total Investments	5,791,226.98	313.96
	Current Assets:		
151,969.73	715. Miscellaneous Accounts Receivable	151,969.73	.....
611,250.00	718. Rents Receivable	672,375.00	61,125.00
763,219.73	Total Current Assets	824,344.73	61,125.00
6,554,132.75	Grand Total Assets	6,615,571.71	61,438.96

[fol. 841]

Alabama Terminal Railroad Company
E. T. Lamb, Receiver
Balance Sheet at December 31, 1915, for Annual Report—Year 1915
I. C. C. Schedule 200-L

B. L. Bell—#3.

Liability Side June 30, 1915	Items:		(b1) Total book liability at close of year	Dec. 31, 1915	Increase or decrease
		Stock:			
3,000,000.00	751.	Capital Stock	3,000,000.00	3,000,000.00	.....
3,000,000.00		Total Stock		3,000,000.00	.....
		Long Term Debt:			
2,445,000.00	755.	Fund. Debt unmatured	2,445,000.00	2,445,000.00	.....
134,733.21	757.	Nonnegotiable Debt to Affiliated Companies (B) Open Accounts		135,047.17	313.96
2,579,733.21		Total Long Term Debt		2,580,047.17	313.96
		Current Liabilities:			
47.50	760.	Audited Accounts and Wages Payable		47.50	.....
118,500.50	761.	Miscellaneous Accounts Payable		118,500.50	.....
855,750.00	762.	Interest Matured unpaid		916,875.00	61,125.00
974,298.00		Total Current Liabilities		1,035,423.00	61,125.00
		Corporate Surplus:			
101.54	784.	Profit and Loss—Credit Balance		101.54	.....
101.54		Total Corporate Surplus		101.54	.....
6,554,132.75		Grand Total Liabilities		6,615,571.71	61,438.96

[fol. 842] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 6-11-32. Resp. Exhibit No. 6. Witness Bell. Reporter Farrell.

EXHIBIT 6

Atlanta, Birmingham & Atlantic Railway Company

Balance Sheet at December 31, 1916, for Annual Report—Year 1916

I. C. C. Schedule 200-A

B. L. Bell—#6

Asset Side Jan. 1, 1916	Items:		Dec. 31, 1916	Increase or decrease
		Investments:		
38,760,149.87	701.	Investment in Road and Equipment	38,352,306.56	407,843.31
75,075.00	705.	Miscellaneous Physical Property	53,572.00	21,503.00
5,000.00	707.	Other Investments (A) Stocks	5,000.00	.....
6,502.42		(C) Notes	15,725.25	9,222.83
2,500.00		(E) Miscellaneous	2,500.00	.....
38,849,227.29		Total Investments	38,429,103.81	420,123.48
		Current Assets:		
281,234.53	708.	Cash	607,096.40	325,861.87
.....	710.	Time Drafts and Deposits	450,000.00	450,000.00
127,690.53	711.	Special Deposits	201,753.28	74,062.75
95.76	712.	Loans and Bills Receivable	450.00	354.24
93,948.63	713.	Traffic and Car Service Balances Receivable	123,571.28	29,622.65
108.29	714.	Net Balance Receivable from Agents and Conductors	62,072.51	61,964.22
197,238.89	715.	Miscellaneous Accounts Receivable	156,221.37	41,017.52
261,764.23	716.	Material and Supplies	335,637.52	73,873.29
842.78	717.	Interest and Dividends Receivable	5,997.40	5,154.62
962,923.64		Total Current Assets	1,942,799.76	979,876.12
		Deferred Assets:		
519.39	720.	Working Fund Advances	777.03	257.64
3,014.74	722.	Other Deferred Assets	311.00	2,703.74
3,534.13		Total Deferred Assets	1,088.03	2,446.10
		Unadjusted Debits:		
5,853.84	723.	Rents and Insurance Premiums Paid in Advance	7,974.03	2,120.19
.....	727.	Other Unadjusted Debits	120,519.90	120,519.90
5,853.84		Total Unadjusted Debits	128,493.93	122,640.09
39,821,538.90		Grand Total Assets	40,501,485.53	679,946.63

Atlanta, Birmingham & Atlantic Railway Company
Balance Sheet at December 31, 1916, for Annual Report—Year 1916
I. C. C. Schedule 200-A

B. L. Bell—#4

Liability Side Items:		Jan. 1, 1916	Dec. 31, 1916	Increase or Decrease
	Stock:			
751.	Capital Stock	30,000,000.00	30,000,000.00	.....
	Total Stock	30,000,000.00	30,000,000.00	.....
	Long Term Debt:			
755.	Funded Debt Unmatured	9,255,786.78	9,004,546.78	251,240.00
	Total Long Term Debt	9,255,786.78	9,004,546.78	251,240.00
	Current Liabilities:			
759.	Traffic and Car Service Balances Payable	95,783.77	229,351.52	133,567.75
760.	Audited Accounts and Wages Payable	322,501.48	355,461.26	32,959.78
761.	Miscellaneous Accounts Payable	13,426.43	15,811.92	2,385.49
762.	Interest Matured Unpaid	124,325.00	230,171.82	105,846.82
767.	Unmatured Rents Accrued	198.00	173.50	204.50
768.	Other Current Liabilities	3,007.74	1,797.99	1,209.75
	Total Current Liabilities	559,242.42	832,768.01	273,525.59
	Unadjusted Credits:			
771.	Tax Liability	1,172.32	243.00	1,415.32
774.	Operating Reserves	.....	42,460.45	42,460.45
776.	Accrued Depreciation—Equipment	.....	126,703.43	126,703.43
778.	Other Unadjusted Credits	7,682.02	129,897.85	122,215.83
	Total Unadjusted Credits	6,509.70	299,304.73	292,795.03
	Corporate Surplus:			
779.	Additions to Property Through Income and Surplus	.....	1,225.76	1,225.76
	Total Appropriated Surplus	.....	1,225.76	1,225.76
784.	Profit and Loss—Credit Balance	.....	363,640.25	363,640.25
	Total Corporate Surplus	39,821,538.90	364,866.01	364,866.01
	Grand Total Liabilities		40,501,485.53	679,946.63

[fol. 844] EXHIBIT 7

Interstate Commerce Commission. Docket No. 3770. Date 6-11-32.
Resp. Exhibit No. 7. Witness Bell. Reporter Farrell.

B. L. Bell—s 7 11

Atlanta, Birmingham & Atlantic Railway Company

B. L. Bugg, Receiver

Balance Sheet at Dec. 31, 1926

Items:	Liability Side
751. Capital Stock, Com	$30,000,000.00
Total Stock	$30,000,000.00
Long Term Debt:	
755. Funded Debt Unmatured	$8,633,906.78
756. Receiver's Certificates	322,500.00
Total Long Term Debt	$8,956,406.78
Current Liabilities:	
759. Traffic and Car Service Balance Payable	$183,527.50
760. Audited Accounts and Wages Payable	1,767,816.61
761. Miscellaneous Accounts Payable	13,716.48
762. Interest Matured Unpaid	1,308,716.65
766. Unmatured Interest Accrued	20,184.66
768. Other Current Liabilities	18,308.67
Total Current Liabilities	$3,312,270.57
Deferred Liabilities:	
770. Other Deferred Liabilities	$3,702.11
Total Deferred Liabilities	$3,702.11
Unadjusted Credits:	
771. Tax Liability	$7,966.92
775. Accrued Depreciation—Road	611,232.78
776. Accrued Depreciation—Equipment	1,306,884.68
778. Other Unadjusted Credits	1,631,387.18
Total Unadjusted Credits	$3,557,471.56
Corporate Surplus:	
779. Additions to Property Thru Income and Surplus	$9,836.82
784. Profit and Loss Balance	3,923,885.83
Total Corporate Surplus	$3,914,049.01
Grand Total	$41,915,802.01

[fol. 845] B. L. Bell—s 8 12

Atlanta, Birmingham & Atlantic Railway Company

B. L. Bugg, Receiver

Balance Sheet at Dec. 31, 1926

Items:	Asset Side
Investment:	
701. Investment in Road & Equipment	$38,896,400.62
704. Deposits in Lieu of Mortgaged Property Sold	237,319.47
705. Miscellaneous Physical Property	1,262,970.04
706. Investments in Affiliated Companies—Stocks	197,180.00
707. Other Investments—Stocks	1,100.00
Total Investments	$40,294,970.13

B. L. Bell—#5 12—Continued

Atlanta, Birmingham & Atlantic Railway Company

B. L. Bugg, Receiver

Balance Sheet at Dec. 31, 1926

	Current Assets:	Asset Side
708.	Cash	$108,138.50
711.	Special Deposits	3,001.22
713.	Traffic and Car-Service Balances Receivable	132,734.62
714.	Agents and Conductors Balance	26,258.41
715.	Miscellaneous Accounts Receivable	278,165.45
716.	Material and Supplies	818,583.63
719.	Other Current Assets	3,051.43
	Total Current Assets	$1,369,333.26
	Deferred Assets:	
720.	Working Fund Advances	$2,758.00
	Total Deferred Assets	$2,758.00
	Unadjusted Debits:	
723.	Rents and Insurance Premiums Paid in Advance	$1,122.64
725.	Discount on Funded Debt	82,128.17
727.	Other Unadjusted Debits	164,889.81
	Total Unadjusted Debits	$248,140.62
	Grand Total	$41,915,802.01

[fol. 846] [Stamp:] Interstate Commerce Commission Docket No. 25170. Date 6-11-32. Resd. Exhibit No. 8. Witness Bell, Reporter Farrell.

EXHIBIT 8

Interstate Commerce Commission

Bureau of Accounts

Washington Aug. 3, 1927.

434850.

Mr. E. L. Greene,
Auditor, Atlanta, Birmingham
and Coast Railroad Company,
Atlanta, Georgia.

DEAR SIR:

Receipt is acknowledged of your letter of June 20, 1927, file 56,000, submitting copies of opening entries recording the acquisition of the property of the Atlanta, Birmingham and Atlantic Railroad Company, together with report prepared by Haskins & Sells, setting forth their reasons why the proposed entries should be approved.

The entries submitted are not acceptable in that the initial charge to account 701, "Investment in Road and Equip-

ment," is based upon a valuation (reproduction cost new) instead of cost. This charge is excessive in the sum of the difference between $24,553,567.55 and $2,162,582.34, or $22,390,985.21, the former sum representing the alleged value of 150,000 shares of no-par common stock issued to the Atlantic Coast Line Railroad in consideration of the payment by that company of current outstanding liabilities of the receiver, reorganization expenses, etc., amounting in the aggregate to $4,080,699.80. This sum less $1,918,117.46, representing depreciation charges set up in account 775, "Accrued depreciation—Road," and 776, "Accrued depreciation—Equipment", constitutes the $2,162,582.34 referred to above.

The Commission's order of October 26, 1926 under Finance Docket No. 5454 and your Company's certificate of notification to the Commission dated January 10, 1927, explicitly sets forth that the no-par common stock shall be and was actually issued to the Atlantic Coast Line in consideration of that carrier assuming the obligations before mentioned.

[fol. 847] While it is true, as stated by Haskins & Sells, that your company did not receive actual cash or property as a result of the action of the Atlantic Coast Line, your company, however, was directly benefited thereby to the extent of $4,080,699.80. Therefore, it will be necessary for you to consider the sum of $4,080,699.80 as the cash value of the 150,000 shares of no-par stock issued to the Coast Line Railroad Company. Assuming, therefore, that the other assets and liabilities are correctly stated in the tentative balance sheet prepared by Haskins & Sells, in compliance with the orders of the Commission you are directed to reduce the initial charges to account 701 by $22,390,985.21, the compilation of which is explained in the second paragraph hereof.

As the correction will place the initial charge to investment account on basis of money costs, it is of course proper that the depreciation reserves referred to in the second paragraph hereof should be cancelled.

Please submit corrected copies of the opening entries to this bureau for completion of its files.

Yours very truly, (s) Alexander Wylie, Director.

This copy reproduced by Auditor, A B & C RR Co August 5th, 1927.

[fol. 848] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 7-11-32. Resp. Exhibit No. 9. Witness Bell. Reporter Farrell.

EXHIBIT 9

Atlanta, Birmingham and Coast Railroad Company

Detail supporting opening journal entry covering investment in Road and Equipment as of January 1, 1927

Value of property acquired per Interstate Commerce Commission's Valuation Docket No. 1

Road

Page 684—		
Atlanta, Birmingham & Atlantic Railroad Company Road and Equipment wholly owned and used		$20,404,960.00
Page 685—		
Wholly owned but not used: Leased to Southern Railway Company		11,000.00
Page 687—		
Alabama Terminal Railroad Company Wholly owned but not used: Leased to and used by the carrier		1,400,000.00
Page 689—		
Georgia Terminal Company Wholly owned but not used:		
Leased to the carrier	$1,406,147.00	
Leased to Southern Railway Company	20,000.00	
		1,426,147.00
Total carrier property—June 30, 1914		$23,242,107.00
Net Additions and Betterments made by carrier, as recorded in the accounts during the period, June 30, 1914, to December 31, 1926:		
Road Property	1,058,576.46	
Equipment	579,211.84	
General Expenditures	11,998.56	
		1,649,786.86
Total value of carrier property at December 31, 1926		$24,891,893.86
Less working capital included Page 685		410,000.00
Net investment in carrier property at December 31, 1926		$24,481,893.86
Less—Depreciated value of equipment as shown by books at December 31, 1926		2,999,776.05
Balance allocated as investment in road at December 31, 1926		$21,482,117.81
Less—Net adjustment on account of additions and retirements of road property prior to January 1, 1927, which had not been recorded in the accounts at December 31, 1926:		
Retirements as per details attached	$610,163.97	
Additions as per details attached	117,885.58	
Net Adjustment		492,278.39
Investment in Road at December 31, 1926		$20,989,839.42

EXHIBIT 9—Continued

[fol. 849] Atlanta, Birmingham and Coast Railroad Company

Detail supporting opening journal entry covering investment in Road and Equipment as of January 1, 1927

Equipment		
Depreciated value of Equipment as shown by books, at December 31, 1926		$2,999,776.05
Steam Locomotives:		
Additions and retirements made during the period January 1, 1916, to December 31, 1926, not recorded in the accounts at latter date:		
Additions per statement attached	$39,921.00	
Retirements per statement attached	25,005.00	
Net Additions		14,916.00
Passenger Train Cars:		
Additions and retirements made during the period January 1, 1916, to December 31, 1926, not recorded in the accounts at latter date:		
Additions per statement attached	6,297.00	
Retirements per statement attached	693.00	
Net Additions		5,604.00
Investment in Equipment at December 31, 1926		$3,020,296.05

Miscellaneous Physical Property

Per Interstate Commerce Commission's Valuation Docket No. 1:

Page 683—		
Property held for purposes other than those of a common carrier:		
Land in Georgia, 740.808 acres...	69,442.81	
Land in Alabama, 85.010 acres...	2,952.45	
Totals.....825.818 acres		$72,395.26
Page 687—		
Alabama Terminal Railroad Company—128.948 acres of land and improvements thereon held for non-carrier purposes		182,813.51
Page 689—		
Georgia Terminal Company—83.653 acres of land and improvements thereon not used for common carrier purposes.		859,749.87
Page 684—		
Non-carrier lands granted to the carrier—15.27 acres		1,656.49
Total Non-carrier property, June 30, 1914		$1,116,615.13
Additions, less retirements, recorded in the accounts during the period, June 30, 1914, to December 31, 1926		146,354.87
Miscellaneous Physical Property at December 31, 1926		$1,262,970.00

EXHIBIT 9—Continued

[fol. 850] Valuation Docket No. 1

(Page 679). It Is Ordered, That the following be, and they are hereby declared to be, the final valuations of the Atlanta, Birmingham & Atlantic Railroad Company, Alabama Terminal Railroad Company, and Georgia Terminal Company, as of June 30, 1914.

Atlanta, Birmingham & Atlantic Railroad Company

(Page 684). Final Value—After careful consideration of all the facts contained in the tentative and supplemental tentative valuations, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the values, for rate-making purposes, of the property of the carrier owned and used and used but not owned, devoted by the carrier to common-carrier purposes, are found to be as follows:

Wholly owned and used	$20,404,960
Used but not owned:	
Leased from Georgia Terminal Company	1,406,147
Leased from Alabama Terminal Railroad	1,400,000
Leased from Southwestern Railroad Company	150
Leased from Southern Railway Company	14,000
Leased from Birmingham Southern Railroad Company	20,000
Total used but not owned	2,840,297
Total used	23,245,257

(Page 685). There is included in the value above stated as owned and used by the carrier the sum of $410,000 on account of working capital, including materials and supplies.

And the values, as that term is used in the interstate commerce act, of the property owned but not used and of the total property owned by the carrier and devoted to common-carrier purposes are found to be as follows:

Wholly owned but not used:	
Leased to Ocilla Southern Railroad Company	$67,000
Leased to Alabama Northern Railroad Company	4,400
Leased to Southern Railway Company	11,000
Total owned but not used	82,400
Total wholly owned and used	20,404,960
Total owned	20,487,360

Alabama Terminal Railroad Company

(Page 687). Final Value—After careful consideration of all the facts contained in the tentative and supplemental tentative valuations, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value for rate-making purposes of the property of the Alabama Company owned but not used, devoted by the carrier to common-carrier purposes, are found to be as follows:

Wholly owned but not used:	
Leased to and used by the carrier	1,400,000
Upon a consideration of all the facts enumerated in the preceding paragraph, the value for rate-making purposes of the carrier property owned by the Alabama Company leased to the carrier and subleased by it to the Woodward Iron Company and devoted to noncarrier uses upon date of valuation is	800,000

EXHIBIT 9—Continued

[fol. 851]

Georgia Terminal Company

(Page 689). Final Value—After careful consideration of all the facts contained in the tentative and supplemental tentative valuations, appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the interstate commerce act, of the property of the Georgia Company, owned but not used, devoted to common-carrier purposes, are found to be as follows:

Wholly owned but not used:		
Leased to the carrier		$1,406,147.00
Leased to Southern Railway Company		20,000.00
Total		1,426,147.00
Total carrier property—June 30, 1914		24,113,507.00
Less Retirement of the following, including above:		
Leased to Ocilla Southern Railroad	$67,000	
Leased to Alabama Northern Railroad	4,400	
Leased to Woodward Iron Company	800,000	
		871,400.00
		23,242,107.00
Less working capital included—Page 685		410,000.00
Net Carrier Property		22,832,107.00
Net Additions and Betterments, 6-30-14 to 12-31-26:		
Road Property	$1,058,576.46	
Equipment	579,211.84	
General Expenditures	11,998.56	
		1,649,786.86
Total Value of Carrier Property at 12-31-26		24,481,893.86

Property Held for Purposes Other than Those of a Common Carrier

(Page 683). The carrier owns 825,818 acres of land which are not devoted to transportation purposes. The original cost of these lands can not be ascertained. The present value of these lands, including improvements thereon, are devided as follows:

In Georgia....740,808 acres	69,442.81
In Alabama.... 85,010 acres	2,952.45
Total	72,395.26

(Page 687). The Alabama Company owns 128,948 acres of land which is held for noncarrier purposes. The data obtained with regard to the original cost of these lands is shown in Appendix 2. The present value of the 128,948 acres of noncarrier lands, and improvements thereon, owned by the Alabama Company is | 182,813.51

(Page 689). The Georgia Company owns 83,653 acres of land not used for common-carrier purposes, the value of which, including improvements, on June 30, 1914, was | 859,749.87

(Page 684). Noncarrier lands granted to the carrier 15.27 acres, present value | 1,656.49

Total noncarrier property 6-30-14	1,116,615.13
Additions, Less Retirements 6-30-14 to 12-31-26	146,354.87
Total Noncarrier property 12-31-26	1,262,970.00
Total Carrier and Noncarrier Property December 31, 1926	$25,744,863.86

[fol. 852] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date 7-11-32. Resp. Exhibit No. 10. Witness Bell. Reporter Farrell.

EXHIBIT 10

Atlanta, Birmingham and Coast Railroad Company

General Balance Sheet—Asset Side

(As of the Commencement of Business)

January 1, 1927

Item (B)	
Investments	
701. Investment in Road and Equipment	$24,010,135.47
705. Miscellaneous Physical Property	1,262,970.00
706. Investment in Affiliated Companies:	
Notes	74,680.00
Stocks	123,600.00
707. Other Investments:	
Notes	.....
Stocks	.....
Total Investments	$25,471,385.47
Current Assets	
708. Cash	$345,457.97
713. Traffic and Car Service Balances Receivable	28,314.53
714. Net Balance Receivable from Agents and Conductors	26,258.41
715. Miscellaneous Accounts Receivable	278,165.45
716. Material and Supplies	818,583.63
719. Other Current Assets	3,838.75
Total Current Assets	$1,500,618.77
Deferred Assets	
720. Working Fund Advances	2,758.00
Total Deferred Assets	$2,758.00
Unadjusted Debits	
723. Rents and Insurance Premiums Paid in Advance	1,122.64
727. Other Unadjusted Debits	176,795.55
Total Unadjusted Debits	$177,918.19
Grand Total	$27,152,680.43

[fol. 853] Atlanta, Birmingham and Coast Railroad Company

General Balance Sheet—Liability Side

(As of the Commencement of Business)

January 1, 1927

Item (B)		
751. Total Stock—Preferred	$5,180,300.00	
—Common	21,528,653.20	
		$26,708,953.20
Capital Stock		$26,708,953.20
Total Liabilities		
759. Traffic and Car Service Balance Payable		79,107.44
760. Audited Account and Wages Payable		265,101.40
761. Miscellaneous Accounts Payable		13,760.55
768. Other Current Liabilities		18,308.67
Total Current Liabilities		$376,278.06

EXHIBIT 10—Continued

Deferred Liabilities	
770. Other Deferred Liabilities	3,702.11
Total Deferred Liabilities	$3,702.11
Unadjusted Credits	
771. Tax Liability	7,966.92
778. Other Unadjusted Credits	55,780.14
Total Unadjusted Credits	$63,747.06
Corporate Surplus	
779. Additions to Property Through Income and Surplus	.....
Total Corporate Surplus	.....
784. Profit and Loss (Debit) Balance	.....
Total Corporate Surplus (Deficit)	.....
Grand Total	$27,152,680.43

Recopied 6-27-32

[fol. 854] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date: 7-13-32. Exhibit No. 13. Counsel Davis.

EXHIBIT 13

Copy

Atlantic Coast Line Railroad Company,

Office of Vice-President

Wilmington, N. C., February 5, 1932.

T. F. Darden, Vice-President.

Mr. Alexander Wylie, Director, Bureau of Accounts, Interstate Commerce Commission, Washington, D. C.

DEAR SIR:

I beg to acknowledge receipt of your letter of February 4th, in regard to item of $3,550,569.52 being carried by this Company in Account 727—"Other Unadjusted Debits" covering expenditures made for the purpose of acquiring capital stock of the Atlanta, Birmingham & Coast Railroad Company.

The entry referred to by you has not yet been made for the reason that the full cost of the acquisition or control of the Atlanta, Birmingham & Coast Railroad Company has not been paid by the Atlantic Coast Line Railroad Company. Furthermore, there is a contingent liability to the

Atlantic Coast Line Railroad Company in connection with certain interest upon Receiver's back taxes.

It is our intention to make the adjustment suggested in your letter just as soon as the full cost of this stock is determined. In the mean time, it is our desire, if possible, to carry the item in suspense.

Yours very truly, (Signed) W. D. McCaig, Comptroller.

[fol. 855] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date: 7-13-32. Exhibit No. 14. Counsel Davis. Reporter: Johnston.

EXHIBIT 14

Copy

Interstate Commerce Commission,

Bureau of Accounts

Washington

February 4, 1932.

Mr. W. D. McCaig, Comptroller, Atlantic Coast Line R. R. Company, Wilmington, North Carolina.

DEAR SIR:

The attention of this bureau has been directed to the inclusion of the amount of $3,550,569.52 in account 727 "Other unadjusted debits", in your annual report for 1930, explained as "A. B. & A. Ry. suspense, purchase of securities, pending adjustment".

As this expenditure was made for the purpose of acquiring capital stock of the Atlanta, Birmingham and Coast Railroad Company, and the annual report of that carrier shows that your company owns practically all of its common stock, the above amount apparently should be carried in account 706, "Investments in affiliated companies".

Please advise whether adjustment has yet been made.

Yours very truly (S.) Alexander Wylie, Director.

[fol. 856] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date: 7/25/32. Exhibit No. 15. Witness: Joint Exhibit. Reporter: Paul.

Exhibit 15

Joint Exhibit 15.
July 25/32.

Interstate Commerce Commission

Docket No. 25170

Accounting for Capital Items

In re Atlantic Coast Line Railroad Company and Atlanta, Birmingham & Coast Rd. Company

Stipulation

Counsel for Atlantic Coast Line and Atlanta, Birmingham & Coast Railroad Companies, reserve all objections appearing in the record both as to the nature of this proceeding and to the issues properly before the commission in the proceeding. Subject to the above reservation, it is stipulated and agreed between counsel for said railroads and counsel for Bureau of Accounts, as follows:

I. Any published decision, report or order of the commission or any of the commission's accounting rules or classifications of accounts, may be referred to in briefs or arguments before the examiner or commission of any court, to the same extent as if the same had been incorporated in the evidence in this record either physically or by reference under Rule XIII (a) and (b) of the commission's rules of practice.

II. The following documents and documentary transcripts of testimony which were introduced in evidence before the commission in Finance Dockets Nos. 5454 and 5470 may likewise be referred to in any briefs and arguments [fol. 857] and shall be herein treated and considered the same as if introduced in evidence in this docket (for convenience reference is made in parenthesis to the pages where the said documentary evidence is set out in the transcript of record in the case of the United States of America and Interstate Commerce Commission v. Atlanta, Birmingham & Coast Railroad Company in the Supreme Court of the United States, October term, 1930, No. 88, to-wit:

1. Agreement between the Atlantic Coast Line Railroad Company and the committees, dated February 23, 1926,

stamped: "Interstate Commerce Commission. Ex. No. 5, Applicant's Docket Nos. 5454, 5470. Date, May 20, 1926. Witness: Warren." (R. 83-91.)

2. Plan of reorganization, dated February 23, 1926, stamped: "Interstate Commerce Commission. Ex. No. 6, Applicant's Docket Nos. 5454, 5470. Date, May 20, 1926. Witness: Warren." (R. 91-111.)

3. Decree of foreclosure and sale, stamped: "Interstate Commerce Commission. Ex. No. 1, Applicant's Docket No. 5454, 5470. Date, May 20, 1926." (R. 30-73.)

4. Opinion of the court on objections of stockholders, stamped: "Interstate Commerce Commission. Ex. No. 2, Applicant's Docket Nos. 5454, 5470. Date, May 24, 1926." (R. 74-80).

5. Order approving plan, stamped: "Interstate Commerce Commission. Ex. No. 3, Applicant's Docket No. 5454, 5470. Date, May 20, 1926." (R. 80-82.)

6. Exhibit 43, filed pursuant to stipulation of counsel, Finance Dockets Nos. 5454 and 5470, consisting of petition for confirmation of sale (R. 130-133), Special master's report of sale (R. 135-138), Memorandum of receipt of bid (R. 138-139), Decree of confirmation of sale (R. 140-158).

[fol. 858] 7. Application of reorganization committee, stamped: "Interstate Commerce Commission. Ex. No. 12, Applicant's Docket Nos. 5454, 5470. Date, May 20, 1926, Witness: Warren." (R. 112-118 and also R. 223-228.)

8. Return to questionnaire, Finance Docket No. 5454 (R. 258-270.) And also schedules V-IX. (R. 285-288.)

9. Joiner in application by Atlanta, Birmingham & Coast together with Exhibits A to G, inclusive, Finance Docket 5454. (R. 229-258.)

10. Application of Atlantic Coast Line Railroad, dated April 12, 1926, and Exhibits thereto, Finance Docket 5470. (R. 448-456.)

11. Supplemental application of the Atlantic Coast Line dated December 6, 1926, and Exhibits thereto. (R. 456-566.)

12. Supplemental application of the Atlanta, Birmingham & Coast Railroad Company for construction by the commission of an order in Finance Docket No. 5454, together with Exhibits A and C. (R. 289-300, 301-302.)

13. Statement of petitioner Atlanta, Birmingham & Coast Railroad Company in connection with its supplemental petition. (R. 325-334.)

14. Extract of transcript of oral argument. (R. 335-336.)

15. Certificate of notification to Interstate Commerce Commission of securities sold, pledged, repledged, or otherwise disposed of, required by paragraph 5 of section 20a of the interstate commerce act, etc., dated January 10, 1927. (R. 336-338.)

16. Testimony of George E. Warren given in Finance Dockets 5454 and 5470, May 20, 1926. (Narrative thereof, R. 163-183.)

17. Testimony of B. L. Bugg, Finance Dockets 5454, 5470, May 20, 1926. (Narrative thereof, R. 176-183 and 188-190.)

18. Testimony of C. MdD. Davis, Finance Dockets 5454, 5470, May 20, 1920. (Narrative thereof, R. 195-202.)

[fol. 859] III. Any of the annual reports to the commission made by the Atlanta, Birmingham and Atlantic Railway Company and/or the receiver for the years 1916 to 1926, both inclusive, any of the annual reports to the commission made by the Atlanta, Birmingham & Coast Railroad Company for the years 1927 to 1931, both inclusive, any of the annual reports of the Atlantic Coast Line to the commission, for the years 1926 to 1931, both inclusive, and the monthly reports to the commission of revenues and expenses and revenue freight carried made by the receiver for 1926, may be referred to in briefs or arguments and may be considered by the commission to the same extent as if the same had been incorporated in this record, either physically or by reference under Rule XIII, (a) and (b), of the commission's rules of practice.

It is further stipulated and agreed that the commission may have access to the above mentioned documentary evidence from its files, from its records in Finance Dockets Nos. 5454 and 5470 and from the aforementioned transcript

of record of the Supreme Court of the United States, without formal introduction of the evidence herein; and that the said documentary evidence herein mentioned shall be considered in deciding this case the same as though formally introduced in evidence in this docket, subject to all and several the objections and reservations hereinbefore stated.

Carl H. Davis, Counsel for Atlantic Coast Line and Atlanta, Birmingham & Coast Railroad Co. R. E. Freer, Counsel for Bureau of Accounts, Interstate Commerce Commission.

[fol. 860] [Stamp:] Interstate Commerce Commission. Docket No. 25170. Date: 7/25/32. Exhibit No. 16. Witness Freer. Reporter Paul.

EXHIBIT 16

This indenture made as of this first day of January, 1927, between George E. Roosevelt, residing at No. 15 East 82nd Street in the Borough of Manhattan, City, County and State of New York, and J. A. Fowler, Jr., residing in the Village of Bayside, County of Queens, State of New York (hereinafter called the Purchasers), parties of the first part,

Julia A. Roosevelt, residing at No. 15 East 82nd Street in the Borough of Manhattan, City, County and State of New York, wife of said George E. Roosevelt, and Hilleda Fowler, residing in the Village of Bayside, County of Queens, State of New York, wife of said J. A. Fowler, Jr., parties of the second part, and

Atlanta, Birmingham and Coast Railroad Company, a railroad corporation organized and existing under the laws of the State of Georgia (hereinafter sometimes called the New Company), party of the third part.

Whereas, pursuant to the Decree of Foreclosure and Sale of the District Court of the United States for the Northern District of Georgia, Northern Division (now Atlanta Division), dated April 30, 1926, in a certain consolidated cause then pending in said court entitled "Birmingham Trust & Savings Company, Complainant v. Atlanta, Birmingham & Atlantic Railway Company, Defendant, Consolidated Cause, in Equity No. 156," and also filed in the several constituent causes in Equity Nos. 156, 188, 187 and

190, (which decree was thereafter adopted, rendered and pronounced on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Georgia, on May 3, 1926, as the decree of the District Court of the United States for the Middle District of Alabama, on May 5, 1926, as the decree of the District Court of the United States for the Northern District of Alabama, and on May 3, 1926, as the decree of the District Court of the United States for the Southern District of Florida, in the proceeding ancillary to the said consolidated cause and/or said constitutent causes,) the property and assets of said Atlanta, Birmingham & Atlantic Railway Company and/or of B. L. Bugg as Receiver thereof were duly sold, and said property and assets have been conveyed to the Purchasers by Albert G. Foster, Esq., Special Master, and others, by deed dated November 16, 1926; and

Whereas, the Purchasers have associated with themselves certain other persons, and the Purchasers and their associates have become a corporation under the name of the New Company, pursuant to the laws of the State of Georgia, and the New Company desires to acquire said property and assets;

Now, therefore, this indenture witnesseth and it is hereby agreed and declared as follows:

1. The Purchasers, parties of the first part, in order to carry into effect the Agreement of Sale and in consideration of One Dollar and other valuable consideration paid to them by the New Company, the receipt and sufficiency whereof are hereby acknowledged, have granted, bargained, sold, assigned, transferred and conveyed and by these presents do hereby grant, bargain, sell, assign, transfer and [fol. 861] convey unto the New Company, the party of the third part, its successors and assigns forever, all the property and assets of every description which were conveyed to the Purchasers, by the above mentioned deed dated November 16, 1926, by Albert G. Foster, as Special Master, under said Decree of Foreclosure and Sale dated April 30, 1926, party of the first part, said Atlanta, Birmingham & Atlantic Railway Company, party of the second part, B. L. Bugg, as Receiver, party of the third part, Old Colony Trust Company, as Trustee under the First Mortgage or Deed of Trust dated January 1, 1904, and the Supplemental Mortgage or Deed of Trust dated September 3, 1904, of the

Atlantic & Birmingham Railway Company, party of the fourth part, Irving Bank-Columbia Trust Company, as Trustee under the Fifteen Year Five Per Cent. Income Mortgage and Deed of Trust of the said Atlanta, Birmingham & Atlantic Railway Company dated as of November 1, 1915, party of the fifth part, and the Purchasers, parties of the sixth part, which deed is referred to, and by reference made a part hereof;

To have and to hold all and singular said property and assets unto the New Company, its successors and assigns, to its and their own proper use, benefit and behoof forever, subject however, to such of the encumbrances, liens, conditions, terms and provisions subject to which the said property and assets were conveyed to the Purchasers, as have not heretofore been discharged, satisfied, performed, released or otherwise complied with and/or removed. Reference is hereby made to the said deed dated November 16, 1926, for a more particular description of the property and assets thereby and hereby conveyed.

2. The parties of the second part hereby join in this conveyance of the said property and assets for the purpose of releasing and conveying unto the New Company, party of the third part, its successors and assigns, all right, title, claim or demand, in, of or to dower and/or any other rights and interests which the parties of the second part or either of them have or might have in or to all or any part of the property and assets hereby conveyed; and the parties of the second part and each of them, and their respective heirs, executors, administrators, and assigns, shall forever hereafter by these presents be excluded and barred of and from all actions, claims and demands of dower and/or any other rights and interests in and to said property and assets.

3. The New Company by acceptance hereof accepts the premises, railroad and property, conveyed and intended to be conveyed hereby, and the New Company by acceptance hereof covenants and agrees to indemnify and save harmless the Purchasers and their and each of their heirs, executors, administrators and assigns from and against all loss, cost, liability and expense in respect of or growing out of the ownership and/or operation of said railroad and other property during the period of its ownership by them, or either of them. In consideration of the foregoing, the Pur-

chasers hereby grant and give to the New Company during the said period of its ownership by them or either of them, all of the income and other proceeds of operation of the said New Company.

4. The Purchasers for themselves, their heirs and representatives agree to warrant and defend title to said property herein conveyed against themselves and all persons or claims under or through them, but not against any other person or claim; provided that the Purchasers do not agree to warrant or defend the title to said property against any taxes or assessments or any judgments or levies under at- [fol. 862] tachment or any other encumbrances or claims arising without action on the part of the Purchasers.

In witness whereof the Purchasers and the parties of the second part have hereunto set their respective hands and seals the day and year first above written.

George E. Roosevelt (L. S.)

Signed, sealed and delivered by George E. Roosevelt in the County of New York, State of New York, in the presence of James Sheehan.

Halvar Utvik, Notary Public, Kings County, Clerk's No. 10, Reg. No. 7001. Certificate filed New York Co. Clerk's No. 1, Reg. No. 7007. Commission expires March 30, 1927. (Seal.)

J. A. Fowler, Jr., (L. S.)

Signed, sealed and delivered by J. A. Fowler, Jr., In the County of New York, State of New York, in the presence of E. Kavanagh.

Anne Karlson, Notary Public, New York County, Clerk's No. 340. New York County Register's No. 8364. Commission expires March 30, 1928. (Seal.)

Julia A. Roosevelt (L. S.).

Signed, sealed and delivered by Julia A. Roosevelt in the County of New York, State of New York, in the presence of James Sheehan.

Halvar Utvik, Notary Public, Kings County. Clerk's No. 10, Reg. No. 7001. Certificate filed New York Co., Clerk's No. 1, Reg. No. 7007. Commission expires March 30, 1927. (Seal.)

[fol. 863] Hilleda Fowler (L. S.).

Signed, sealed and delivered by Hilleda Fowler in the County of New York, State of New York, in the presence of Tysilio Thomas.

Anne Karlson, Notary Public, New York Co. Clerk's No. 340. New York County Register's No. 8364. Commission expires March 30, 1928.

STATE OF NEW YORK,
County of New York, ss:

I, Halvar Utvik, a Notary Public in and for said County in said State, hereby certify that George E. Roosevelt, whose name is signed to the foregoing conveyance and who is well known to me, asknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this the thirtieth day of December, A. D. 1926.

Halvar Utvik, Notary Public. Kings County Clerk's No. 10, Reg. No. 7001. Certificate filed New York Co., Clerk's No. 1, Reg. No. 7007. Commission expires March 30, 1927. (Notarial Seal.)

STATE OF NEW YORK,
County of New York, ss:

I, Anne Karlson, a Notary Public in and for said County and in said State, hereby certify that J. A. Fowler, Jr., whose name is signed to the foregoing conveyance and who is well known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this the 29th day of December, A. D. 1926.

Anne Karlson, Notary Public. New York County Clerk's No. 340, New York County Register's No. 8364. Commission expires March 30, 1928.

[fol. 864] STATE OF NEW YORK,
County of New York, ss:

I, Halvar Utvik, a Notary Public in and for the County and State aforesaid, do hereby certify that on the 30th day of December, 1926, came before me Julia A. Roosevelt, whose name is signed to the foregoing instrument, known to me to be the wife of George E. Roosevelt, who, being examined by me separate and apart from her said husband, touching her signature to and execution of the said instrument, acknowledged that she signed and executed the same freely and voluntarily and without compulsion, constraint, apprehension, fear or threats of from or on the part of her husband, and with intention to renounce and convey all dower or other right, title and interest in and to the property conveyed by the foregoing instrument.

Given under my hand and official seal this 30th day of December, 1926.

Halvar Utvik, Notary Public. Kings County Clerk's No. 10, Reg. No. 7001. Certificate filed New York Co. Clerk's No. 1. Reg. No. 7007. Commission expires March 30, 1927.

[fol. 865] STATE OF NEW YORK,
County of New York, ss:

I, Anne Karlson, a Notary Public in and for the County and State aforesaid, do hereby certify that on the 30th day of December, 1926, came before me Hilleda Fowler, whose name is signed to the foregoing instrument, known to me to be the wife of J. A. Fowler, Jr., who, being examined by me separate and apart from her said husband, touching her signature to and execution of the said instrument, acknowledged that she signed and executed the same freely and voluntarily and without compulsion, constraint, apprehension, fear or threats of, from or on the part of her husband, and with intention to renounce and convey all dower or other right, title and interest in and to the property conveyed by the foregoing instrument.

Given under my hand and official seal this 30th day of December, 1926.

Anne Karlson, Notary Public.

New York County Clerk's No. 340. New York County Register No. 8364. Commission expires March 30, 1928

[fol. 866] In United States District Court for the Northern District of Georgia, Atlanta Division

No. 767

Atlanta, Birmingham & Coast Railroad Company, Plaintiff,

vs.

The United States of America, Defendant.

Final Decree—Filed Dec. 14, 1934

This case came on for hearing for final decree before a court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable W. I. Grubb and Honorable E. Marvin Underwood, District Judges, and evidence and argument were heard. The court took time to consider, and now, being fully advised, our conclusions are stated as follows:

In the proceedings heretofore had touching the accounting entries upon the books of complainant here in controversy, the Interstate Commerce Commission has taken the broad view that in the negotiations by which complainant acquired its railroads, the reorganization committee and its members through whom the title passed ought to be ignored, and the matter viewed as though Complainant had dealt directly with Atlantic Coast Line Railroad Company, giving to it its whole common stock in exchange for the cash payments made by Atlantic Coast Line Railroad Company, by which the title was freed of incumbrances (other than the new preferred stock) and which cash was thus in effect paid to complainant for its common stock. This court, on the other hand, has viewed the transaction more narrowly, noting that the title to the railroad was passed to the members of the Reorganization Committee subject to the incumbrances [fol. 867] before the complainant was ever organized, that the Atlantic Coast Line Railroad Company arranged with them to pay off the incumbrances and to receive therefor the common stock when issued, and that months afterwards, upon the organization of complaint, it issued its preferred stock to the Reorganization Committee for distribution to the bondholders of the old company, and its en-

tire common stock in the name of the Atlantic Coast Line Railroad Company, at the direction of the Reorganization Committee, in return for which it received from the Committee a deed to the railroad properties. This deed was expressly made subject to such of the incumbrances as had not theretofore been discharged. All were in fact discharged at the time of its delivery, except some relatively slight items not then due, as to which the Atlantic Coast Line Railroad Company then delivered to the Receiver, not to complainant, its commitment for future discharge, which was carried out. In the view of the court the complainant paid for the railroad its entire capital stock, and received for its common stock the value of the railroad less the par of the preferred stock, making it necessary to value the property received and to subtract the par of the preferred stock in order to find what was received for the common stock according to the accounting rules of the Commission and according to the words of the condition in the consent of the Commission to the reorganization transaction.

We do not think the views of the court as heretofore expressed are either res judicata or the law of the case on the present bill. They have no more weight than their reasonableness entitles them to. We are not dissatisfied with them, but find it unnecessary to reassert them, because, while the Commission in making the order now under attack adhered to its former broad view that the complainant received for its common stock what the Atlantic Coast Line [fol. 868] Railroad Company paid out in cash to disincumber the property and that no valuation of it was necessary; nevertheless it has also valued it, in conformity with the view of the court, at such a value as that subtraction of the par of the preferred stock gives the same figures for the common stock as were reached originally by the Commission. We do not discover any breach of law in arriving at the value. As a finding of fact it is binding in this court. In either view of the transaction of reorganization, the figure set up by the Commission in the attacked order is unassailable.

It is therefore considered and adjudged and decreed by the court that the prayers of the petition be denied, and

the injunction sought be refused, and the bill dismissed at the cost of complainant.

This the 10th day of December, 1934.

Samuel H. Sibley, United States Circuit Judge, W. I. Grubb, United States District Judge, E. Marvin Underwood, United States District Judge.

[fol. 869] [File endorsement omitted.]

[fol. 870] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF INTENTION TO APPEAL—Filed Feb. 11, 1935

To the Attorney General of the United States of America, the Interstate Commerce Commission, the Attorney General of the State of Georgia:

Please take notice that it is the intention of the Atlanta, Birmingham and Coast Railroad Company, by its Solicitors, to enter an appeal in the above numbered and styled cause from the final decree therein dated December 10, 1934, entered and filed December 14, 1934, on complainant's bill to enjoin an order of the Interstate Commerce Commission entered in Docket No. 25170. Said appeal will be presented for allowance to the United States District Judge at his Chambers, Post Office Building, Atlanta, Georgia, on February 5, 1935, at 9:30 o'clock a. m. Please govern yourselves accordingly.

Carl H. Davis, John A. Hynds, Robert C. Alston, Wm. Hart Sibley, Solicitors for Atlanta, Birmingham and Coast Railroad Co. Brandon, Hynds, & Tindall; Alston, Alston, Foster & Moise, of Counsel.

[fols. 871 & 872] Service of the above and foregoing notice of intention to appeal is acknowledged; copy received; all other further notice and service is hereby waived.

This 29th day of January, 1935.

Elmer B. Collins, Special Asst. to the Attorney General of the United States; Nelson Thomas, Attorney for the Interstate Commerce Commission; M. J. Yeomans, Attorney General of the State of Georgia.

[File endorsement omitted.]

[fol. 873] IN UNITED STATES DISTRICT COURT

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed Feb. 11, 1935

The Atlanta, Birmingham and Coast Railroad Company, complainant in the above numbered and styled cause, hereinafter called appellant, feeling itself aggrieved by the final decree of the United States District Court for the Northern District of Georgia, Atlanta Division, dated December 10, 1934, and entered and filed December 14, 1934, in the above numbered and styled cause, prays that an appeal be allowed by this court to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith.

Appellant shows that Notice of Intention to apply for this appeal has been given to all parties defendant to this record, said notice being hereto attached.

Appellant prays that an appeal be allowed and that an order be entered fixing the amount of the bond thereon, if any be required, and that a citation be issued as provided by law, and that a transcript of the record, (or the original record as the case may be), proceedings and decree, duly authenticated, be transmitted to the Supreme Court of the United States.

[fol. 874] ASSIGNMENT OF ERRORS

Appellant assigns the following errors in the record and proceedings in said cause: That is to say:

The District Court erred in that:

1. It denied the prayer marked "D" of the Thirty-sixth paragraph of appellant's complaint, especially so much thereof as prayed that the Interstate Commerce Commission, its officers, agents and employees be permanently enjoined from enforcing its order of July 9, 1934 (201 I. C. C. 645) by which it ord-red that:

"The Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to eliminate from account 751, 'Capital Stock', all liability on account of non-par common stock in excess of $4,248,413.76";

and in which it further ordered

"That the Atlanta Birmingham and Coast Railroad Company adjust its current accounts to state the balance in account 701, 'Investment in road and equipment', in accordance with the classification of investment in road and equipment as provided under account 41, 'Cost of road purchased', and in conformity with the preceding paragraph hereof";

and in which it further ordered

"That this order shall take effect and be in force from and after thirty days from the date of service hereof."

2. By its decree aforesaid the court denied appellant's prayer marked "E" of the Thirty-sixth paragraph of said bill of complaint which sought to have the said order of the Interstate Commerce Commission of July 9, 1934 held to be invalid and illegal upon each of the grounds set forth in appellant's bill of complaint.

[fol. 875] 3. The court should have found that the order of the Interstate Commerce Commission complained of was arbitrary for that:

(a) It was contrary to the evidence adduced before the Commission in this proceeding;

(b) The Commission based its order on the erroneous finding that the transaction was one in which the Atlanta, Birmingham and Coast Railroad Company sold its shares of stock to the Atlantic Coast Line Railroad Company in consideration of the latter Company's furnishing to or for it moneys with which to pay items of prior indebtedness upon said properties; whereas the Atlanta, Birmingham and Coast Railroad Company issued its shares of preferred and common stock to representatives of the bondholders of the old Atlanta, Birmingham and Atlantic Railway Company in consideration of the conveyance to it, by said representatives, of the properties of the old Atlanta, Birmingham and Atlantic Railway Company and its receiver, free of liens.

(c) It did not give to the valuation made by the Interstate Commerce Commission of the properties acquired

by the Atlanta, Birmingham and Coast Railroad Company, which were formerly owned by Atlanta, Birmingham and Atlantic Railroad Company, Georgia Terminal Company and Alabama Terminal Rd. Co., the prima facie effect which the law attributes to such findings.

4. The court should have found that the Interstate Commerce Commission in stating the value of the 640 miles of railroad and other properties to be $9,428,713.76, did not consider the evidence as to cost of construction of the properties acquired by Atlanta, Birmingham and Coast Railroad Company; nor the evidence as to the value of the terminal properties in Atlanta, Georgia and Birmingham Alabama, acquired by the Atlanta, Birmingham and Coast Rd. Co.

[fol. 876] 5. The court should have found that the Interstate Commerce Commission did not give any consideration to the value of the properties acquired by the Atlanta, Birmingham and Coast Railroad Company. It should have found that the only witness introduced by the Commission as to valuation stated that he did not consider the value on January 1, 1927, of any of the physical properties acquired by the Atlanta, Birmingham and Coast Railroad Company from Roosevelt and Fowler as of the said date.

6. The court should have found that the sole witness for the Commission as to value stated that he did not reach any conclusion as to the value of any specific pieces of property acquired by the Atlanta, Birmingham and Coast Railroad Company in exchange for its stock.

7. The court should have found that the Interstate Commerce Commission in making its purported valuation left out of consideration the cost of reproduction of the property, and the value of the property as an element in connecting the Atlantic Coast Line Railroad Company with its subsidiaries and the completion of its System, including connection between the Atlantic Coast Line Company's lines and those of the Louisville and Nashville Railroad Company; and that likewise the Commission treated as irrelevant and immaterial its own valuation of this property as of June 30, 1914, although the value was shown to be greater on January 1, 1927, than on June 30, 1914; as to all of which there was ample evidence.

[fol. 877] 8. The court should have found that the Commission erred in applying to the transaction at hand by which the Atlanta, Birmingham and Coast Railroad Company acquired the properties now owned by it, a rule different from the rule customarily applied by it in cases of similar reorganizations; to the injury of the Atlanta, Birmingham and Coast Railroad Company.

9. The court should have found that the judgment and decree of the District Court in the case of Atlanta, Birmingham and Coast Railroad Company versus United States of America (28 Fed. (2d) 885) was res adjudicata as to the nature of the transaction under which the stock of the Atlanta, Birmingham and Coast Railroad Company was issued, as to the meaning of the condition in the Commission's order of December 21, 1926, authorizing the Railroad Company to issue its securities, and as to there being but one question left for determination which was the value of the property received by the Railroad Company in exchange for its stock as of January 1, 1927.

10. The court should have found that the Commission was influenced in its finding by the erroneous idea that the par value of the preferred stock plus the amount paid by the Atlantic Coast Line to the Bondholders' Committee for the common stock was the sole question for determination rather than the value of the property itself, and that the finding of the Commission was arbitrary and void because it treated such par value and price paid as the ultimate fact to be determined.

[fol. 878] 11. The court should have found that the Commission was laboring under a misconception as to the meaning of the condition "that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor", contained in the Commission's order of December 21, 1926, authorizing the issuance of the stock, and that the Commission's finding of value was arbitrary and void because it was necessarily influenced by this misconception.

12. The decree of the District Court appealed from in this cause fails to meet the requirements as to findings of fact and of law as set forth in Federal Equity Rule No. 70½.

13. The decree of the District Court appealed from in this cause is contrary to the evidence.

14. The decree of the District Court appealed from in this cause is contrary to the law.

PRAYER FOR REVERSAL

For which errors appellant prays that the said decree of the United States District Court for the Northern District of Georgia entered and filed December 14, 1934, in the above styled and numbered cause, be reversed and a decree be rendered in favor of appellant and for costs.

Carl H. Davis, John A. Hynds, Robert C. Alston, W. H. Sibley, Solicitors for Atlanta, Birmingham and Coast Railroad Company.

[File endorsement omitted.]

[fol. 879] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed Feb. 11, 1935

The Atlanta, Birmingham and Coast Railroad Company, complainant in the above entitled cause, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree of this court dated December 10, 1934, entered and filed December 14, 1934, and from each and every part thereof, and due notice having been given of the intention to apply for said appeal to the Attorney General of the United States, the Interstate Commerce Commission, the Attorney General of the State of Georgia, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided, after consideration thereof

It is now here ordered and adjudged that the appeal of the Atlanta, Birmingham and Coast Railroad Company be and the same is hereby allowed to the Supreme Court of the United States from the United States District Court

for the Northern District of Georgia, Atlanta Division, in this cause as provided by law;

[fols. 880 & 881] It is further ordered that the Clerk of the Court appealed from shall prepare and certify a transcript of the record (or the original record as the case may be), proceedings and decree in this cause and transmit the same to the Supreme Court of the United States so that the same shall be in said court within forty (40) days of this date.

It is further ordered that security for costs on appeal be fixed in the sum of five hundred dollars and a bond with good and sufficient surety in said amount, to be approved by this court, be filed, conditioned upon the said appellant's prosecuting its appeal to *to* effect and answering all costs if it fails to make its plea good.

This the 9 day of February, 1935.

Samuel H. Sibley, United States Circuit Judge. W. I. Grubb, United States District Judge. E. Marvin Underwood, United States District Judge.

[File endorsement omitted.]

[fols. 882-886] Bond on appeal for $500.00 approved and filed Feb. 11, 1935, omitted in printing.

[fols. 887-889] Citation in usual form showing service on Elmer B. Collins et al., filed Feb. 11, 1935, omitted in printing.

[fol. 890] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR ORDER DIRECTING TRANSMITTAL OF ORIGINAL RECORD—Filed March 12, 1935

Comes now Atlanta, Birmingham & Coast Railroad Company, complainant in the above entitled cause, and, with leave of the Court first had, files this its motion and shows as follows:

1

That on the 9th day of February, 1935, movant's appeal from the final decree entered in this Court December 14, 1934, in this cause was allowed and entered in the Clerk's office February 11, 1935. Citation has been issued and served.

2

Petitioner further shows that under the provisions of the law in such cases made and provided (Urgent Deficiencies Act of October 22, 1913, Chapter 32; 38 Statutes 220; Judicial Code Sec. 210; 28 U. S. C. A. Par. 47A) "the District Court may direct the original record instead of a transcript thereof to be transmitted on appeal".

[fol. 891] 3

Petition shows that the record in this cause contains exhibits as well as transcript of the evidence before the Interstate Commerce Commission, and that the copying of the same, to the end that it be recopied in the Supreme Court, is useless and unnecessary.

Wherefore, petitioner prays that an order be entered directing the Clerk of this Court to transmit to the Supreme Court of the United States such parts of the original record as may be set out in the præcipe filed by appellant in said appeal.

Carl H. Davis, John A. Hynds, Robert C. Alston, Wm. Hart Sibley, Attorneys for Movant, Atlanta, Birmingham and Coast Railroad Company.

[fol. 892] Notice of Intention to File Motion

Notice of intention to file the above and foregoing motion to take up the original record is acknowledged; copy of same and proposed order received. We consent to the entry of said order.

This 21st day of February, 1935.

United States of America, By Elmer B. Collins, Special Assistant to the Attorney General; Interstate Commerce Commission, By Nelson Thomas, Attorney.

[fol. 893] IN UNITED STATES DISTRICT COURT

ORDER DIRECTING TRANSMITTAL OF ORIGINAL RECORD

The above and foregoing motion to direct the transmittal of the original record to the Supreme Court in lieu of transcript having been presented to me, and all parties consenting;

It is considered, ordered and decreed that the same be filed and that the Clerk of this Court be and he is hereby directed to transmit to the Supreme Court of the United States such parts of the original record as may be specified by appellant in its praecipe, to be used in said appeal in lieu of transcript, without prejudice to the rights of any party to insist in said Supreme Court that any other parts of said record not so transmitted are essential to the proper consideration and determination of said appeal by said Supreme Court.

Dated this 12 day of March, 1935.

Sam'l. H. Sibley, Judge United States Circuit Court of Appeals; E. Marvin Underwood, Judge United States District Court; W. I. Grubb, Judge United States District Court.

[File endorsement omitted.]

[fols. 894 & 895] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed Feb. 16, 1935

To The United States of America, Interstate Commerce Commission, the Honorable Attorney General of the State of Georgia:

Please take notice that by order of the above entitled Court made and entered the 9th day of February, 1935, an appeal to the Supreme Court of the United States by the Atlanta, Birmingham and Coast Railroad Company, complainant in the above entitled cause, has been taken and allowed.

Carl H. Davis, John A. Hynds, Robert C. Alston, W. H. Sibley, Attorneys for Atlanta, Birmingham and Coast Railroad Company.

Received a copy of the above and foregoing notice, this 14th day of February, 1935.

The United States of America, by Elmer B. Collins, Special Asst. to the Attorney General; Interstate Commerce Commission, by Nelson Thomas, Its Attorney; M. J. Yeomans, Attorney General of the State of Georgia.

[File endorsement omitted.]

[fol. 896] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD—Filed March 12, 1935

The Clerk of this Court is hereby directed to certify the entire original record in the above entitled cause for the use of the Supreme Court of the United States in the appeal duly allowed and entered herein, to-wit:

1. Bill of Complaint of Atlanta, Birmingham and Coast Railroad Company and all entries and orders thereon, filed August 30, 1934.

2. Intervention of the Interstate Commerce Commission and all entries and orders thereon, filed October 17, 1934.

3. Answer of the Interstate Commerce Commission filed October 17, 1934.

4. Answer of the United States filed October 20, 1934.

5. Transcript of the record in the United States Supreme Court, No. 88, October term, 1930, filed November 14, 1934.

6. Original exhibit of the complainant, consisting of transcript of evidence before the Interstate Commerce Commission June 10, 11, July 11, 12, 13, 25, 1932, and exhibits introduced by witnesses consisting of 39 photostat pages.

[fol. 897] 7. Exhibit No. 1 of the Interstate Commerce Commission, consisting of transcript of arguments of counsel before the Interstate Commerce Commission July 14, 1926, consisting of 149 pages.

8. Final decree and judgment of the United States District Court, dated December 10, 1934, entered and filed December 14, 1934.

9. Notice of intention to appeal, filed February 11, 1935.

10. Petition for appeal, assignment of error and prayer for reversal, entered and filed February 11, 1935.

11. Order allowing appeal, entered and filed February 11, 1935.

12. Appeal bond approved, entered and filed February 11, 1935.

13. Statement as to jurisdiction and acknowledgment of service in accordance with Rule 12 of the Supreme Court of the United States, filed February 14, 1935.

14. Citation with acknowledgment of service thereon, filed February 14, 1935.

15. Motion to take up original record and order thereon, filed ——, 1935.

16. Notice of appeal, filed February 14, 1935.

17. This praecipe for original record, acknowledgments of service and notice and waivers signed by attorneys of record in this cause.

This — day of Mareh, 1935.

Carl H. Davis, John A. Hynds, Robert C. Alston, Wm. Hart Sibley, Counsel for Atlanta, Birmingham and Coast Railroad Company, Appellant.

[fols. 898 & 899] Service of the within and foregoing Praecipe is acknowledged, copy received, and all other or further notice and service is hereby waived.

This 6 day of March, 1935.

United States of America, by Elmer B. Collins, Special Assistant to the Attorney General; Interstate Commerce Commission, by Nelson Thomas, Attorney.

[fol. 900] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 901] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED ON AND DESIGNATION AS TO PRINTING RECORD—Filed March 23, 1935

Comes now the appellant in the above entitled cause and pursuant to Rule 13 (9) of this Court states that the points upon which it intends to rely in this Court and this case are as follows:

Point One: The report and order of the Commission of July 9, 1934, is based on an entire disregard of the evidence in this record, both as to the acquisition by appellant of its properties and as to the value of the properties so acquired by it, and is, therefore, arbitrary and void.

(Assignments of Error Nos. 1, 2, 3 and 13.)

[fol. 902] Point Two: The order of the Commission of July 9, 1934, requires that appellant set up its 640 miles of road and all of its equipment at approximately $6,730,000.00 instead of $24,010,135.07. Its equipment is fairly appraised at approximately $3,000,000.00, which leaves only $3,730,000.00 for all of its other property. This other property was valued by the Commission, as of 1914, under Section 19a of the Interstate Commerce Act, at more than $20,000,000,00, and is shown by evidence in this record to have been worth, as of January 1, 1927, when acquired by appellant, more, for any purpose for which a railroad had value, than it was worth in 1914.

(Assignments of Error Nos. 1, 3, 4, 6, 7 and 13.)

Point Three: The order of the Commission dated July 9, 1934, could be justified only by reason of the condition in the order of December 21, 1926, in Finance Docket No. 5454, which required that the stock of appellant be set up on its books at an amount "not in excess of the amount received therefor". But for this condition, appellant's road and equipment account would, under usual practice as stated in this record by witness for the Commission be set up at a figure approximating the amount at which that road and equipment was carried on December 31, 1926, on the books of the old Company, of which appellant is successor in title, through reorganization. Said figure was $38,596,400.62. The said condition does not, under the facts as shown in this record, justify the present order of the Commission.

(Assignments of Error Nos. 8, 9 and 11.)

[fol. 903] Point Four: The order of the Commission is based on a finding that appellant received its property subject to liens amounting to $4,248,413.76. This finding is contrary not only to all the evidence in this record, but also to the fact as stated by the Commission in its brief filed in the Supreme Court of the United States in prior litigation relating to the subject matter of this suit.

(Assignments of Error Nos. 1, 2, 3, 10 and 13.)

Point Five: The order of the Commission is based on a finding that appellant issued its common stock to Atlantic Coast Line Railroad Company in consideration of the payment by that Company of liens subject to which appellant took the deed to its properties. This finding is contrary to all the evidence in this record.

(Assignments of Error Nos. 1, 2, 3, 10 and 13.)

Point Six: The order of the Commission of July 9, 1934, is based on an entire disregard not only of the evidence in this record but of the Commission's final valuation as of 1914, of the properties of the predecessor in title of appellant, made under Section 19a of the Interstate Commerce Act. In its said final valuation, the Commission stated that the value there found was "the fair value of the property which the carrier holds for and uses in the service of transportation and upon which it is entitled to earn a fair return". The figure claimed by appellant to be proper is [fol. 904] based on said valuation. The Commission holds its said valuation to be irrelevant and immaterial, and its purported finding of value is contrary to the evidence in this record.

(Assignments of Error Nos. 1, 2, 3, 5, 6, 13 and 14.)

Point Seven: In its report of July 9, 1934, the Commission purports to find "that the market or fair cash value of the properties in question did not exceed the sum of $9,428,713.76 as of January 1, 1927". This figure is the sum of $5,180,300.00 face value of the preferred stock issued by appellant, plus the $4,248,413.76 paid by Atlantic Coast Line Railroad Company in discharge of the prior liens, and no part of which was received by appellant. This purported finding by the Commission is not a finding of value,

but a mere addition of said figures, and is based on the prior erroneous finding, contrary to all the evidence in the record, that appellant took its property subject to said prior liens. It is contrary to the evidence, and is arbitrary and void.

(Assignments of Error Nos. 1, 2, 3 and 13.)

Point Eight: The opinion and decree of the District Court of the United States for the Northern District of Georgia, entered on the 26th day of October, 1928, in the suit of this appellant against United States of America, in which suit the Interstate Commerce Commission was also party defendant (28 Fed. (2d) 885), and in which the same subject matter as that here involved was under consideration, en- [fol. 905] joining the said defendants from requiring the use of the very figure here required, and never appealed from, constitute res adjudicata of the facts concerning the acquisition by this appellant of its properties. The order of the Commission here under review is contrary to and in disregard of the facts as they exist and were there found by that court to be.

(Assignments of Error Nos. 9 and 14.)

Point Nine. The decree of the District Court is contrary to the law applicable and contrary to the evidence and is defective in that it is not supported by a separate and special finding of facts and statement of conclusions of law, as required by Equity Rule No. 70½.

(Assignments of Error Nos. 12, 13 and 14.)

Designation of the Parts of the Record for the Consideration of the Points to be Relied on

And the appellant further states that the entire original record as filed in this case is necessary for the consideration of the points above specified, but that only such parts of the original record as shall be designated in a stipulation entered into by the appellant and the appellee need be printed by the Clerk for the hearing of this cause, which stipulation is filed herewith and made a part hereof.

Respectfully submitted: Carl H. Davis, John A. Hynds, Robert C. Alston, Wm. Hart Sibley, Attorneys for Atlanta, Birmingham and Coast Railroad Company, Appellant.

[fols. 906 & 907] STATE OF GEORGIA,
County of Fulton:

Before me, a Notary Public for the State of Georgia at Large, personally appeared Wm. Hart Sibley, who being by me first duly sworn deposes and says that on behalf of the appellant, Atlanta, Birmingham and Coast Railroad Company, on March 21, 1935, he served the foregoing Statement of Points to be Relied on and Designation of the Parts of the Record upon United States of America and the Interstate Commerce Commission by depositing copies of said Statement, duly sealed in envelopes addressed respectively to Elmer B. Collins, Esq., Assistant Attorney General, Department of Justice, Washington, D. C., and Nelson Thomas, Esq., Attorney, Office of the Chief Counsel Interstate Commerce Commission, Washington, D. C., in the United States Post Office at Atlanta, Georgia, on said date, said appellant having theretofore affixed to said envelopes, respectively, sufficient uncancelled United States postage stamps to assure delivery thereof to said addressees.

Wm. Hart Sibley.

Sworn to and subscribed before me, this 21st day of March, 1935.

Margery Davenport, Notary Public, Georgia, State at Large. My commission expires Dec. 24, 1936. (Seal Margery Davenport, Notary Public, State of Georgia at Large.)

[fol. 908] [File endorsement omitted.]

[fol. 909] IN SUPREME COURT OF THE UNITED STATES

STIPULATION WITH REFERENCE TO PRINTING THE RECORD—Filed May 28, 1935

Appellant and Appellees, by their respective counsel, herewith stipulate that the entire record is necessary for consideration in determination of this cause, but such parts of the record as are herein designated shall be omitted in printing the same:

1. Such omissions as the Clerk shall make pursuant to Paragraph 9 of Rule 13.

2. Exhibit No. 1 of the Interstate Commerce Commission (item 7 of the Præcipe), being the oral argument dated July 14, 1926, before the Interstate Commerce Commission in Finance Docket No. 5454, except that certain excerpts therefrom shall be printed, which are hereto attached to this stipulation.

3. Exhibit No. 1 of appellant, Atlanta, Birmingham and Coast Railroad Company, (item 6 of the Præcipe), being [fol. 910] the transcript of the evidence before the Interstate Commerce Commission in Docket No. 25170, dated June 10, 11, July 11, 12, 13 and 25, 1932, and 19 exhibits thereto, shall be omitted from printing, except as hereinafter stated: Herewith filed is a narrative form of the transcript of the testimony, which shall be printed in lieu of said portion of said exhibit No. 1. Exhibits to exhibit No. 1, numbered 1 to 10, inclusive, shall be printed as a part of the record. Exhibits numbered 11 and 12 shall be omitted. Exhibits numbered 13, 14, 15 and 16 shall be printed. Exhibits 17, 18 and 19 shall be omitted.

4. The transcript of the record in the United States Supreme Court in the case of United States of America and Interstate Commerce Commission, Appellants, vs. Atlanta, Birmingham and Coast Railroad Company, No. 88, October Term, 1930, (item 5 of the Præcipe), shall be omitted, except that the following shall be printed:

(1) Agreement between the Atlantic Coast Line Railroad Company and the committees, dated February 23, 1926, stamped: "Interstate Commerce Commission. Ex. No. 5, Applicant's Docket Nos. 5454, 5470. Date, May 20, 1926. Witness: Warren." (Above Supreme Court record, pages 83-91.)

(2) Plan of reorganization, dated February 23, 1926, stamped: "Interstate Commerce Commission. Ex. No. 6, Applicant's Docket Nos. 5454, 5470. Date, May 20, 1926. Witness: Warren." (Above Supreme Court record, pages 91-111.)

(3) Joiner in application by Atlanta, Birmingham & Coast omitting exhibits, Finance Docket 5454. (Above Supreme Court record, pages 229-231.)

(4) Application of Atlantic Coast Line Railroad, dated April 12, 1926, omitting exhibits thereto. Finance Docket 5470. (Above Supreme Court record, pages 448-452.)

[fol. 911] (5) Supplemental application of the Atlantic Coast Line, dated December 6, 1926, omitting exhibits thereto. (Above Supreme Court record, pages 456-457.)

(6) Supplemental application of the Atlanta, Birmingham & Coast Railroad Company for construction by the commission of an order in Finance Docket No. 5454, together with Exhibits A, B, and C. (Above Supreme Court record, pages 289-302.)

(7) Statement of petitioner Atlanta, Birmingham & Coast Railroad Company in connection with its supplemental petition. (Above Supreme Court record, pages 325-334.)

(8) Certificate of notification to Interstate Commerce Commission of securities sold, pledged, repledged, or otherwise disposed of, required by paragraph 5 of Section 20a of the Interstate Commerce Act, etc., dated January 10, 1927. (Above Supreme Court record, pages 336-338.)

5. All parts of the original record on file with the Clerk of the United States Supreme Court omitted from printing may be referred to by either party or their counsel in briefs or arguments with like effect as if printed in this record, and the whole record that was before the lower court shall be deemed to be before the Supreme Court.

6. This stipulation shall be printed.

Executed and filed with the Clerk of the Supreme Court of the United States, this 28th day of May, 1935.

Elmer B. Collins, Special Assistant to the Attorney General. Nelson Thomas, Attorney for the Interstate Commerce Commission. Carl H. Davis, John A. Hynds, Robert C. Alston, Wm. Hart Sibley, Attorneys for Atlanta, Birmingham and Coast Railroad Company.

[fol. 912] Parts of Argument Before Division 4 of the Interstate Commerce Commission Held July 14, 1926, in Finance Dockets No. 5454, Application of Reorganiza-

tion Committee on Behalf of the Atlanta, Birmingham & Coast Railroad Company for Authority to Acquire and Operate the Atlanta, Birmingham & Atlantic Railway and to Issue Securities, and No. 5470, Application of Atlantic Coast Line Railroad Company for Authority to Acquire Control of the Atlanta, Birmingham & Coast Railroad Company by Purchase of Capital Stock and to Assume Certain Obligations

COMMISSION'S EXHIBIT A

Material Portions of Argument of Mr. J. A. Fowler, Jr., Appearing for the Reorganization Committee of Bondholders

"Mr. Fowler: If the Commission please, I am in terrible voice this morning, and so I will try to cover in a very few minutes what would normally take an hour or so to cover.

You have before you two applications. One is an application by the Atlanta, Birmingham & Atlantic bondholders; the other is an application by the Atlantic Coast Line Railroad Company. They both are designed to carry out an agreement dated February 23 of this year between the bondholders and the Coast Line.

There has been a plan of reorganization promulgated to carry out that agreement." (Commission's Exhibit A, page 146.)

* * * * * * *

"The plan or agreement between the bondholders and the Coast Line is this. The bondholders agree to acquire the property through the foreclosure of their mortgages. The Coast Line steps up and pays in the $3,000,000 of prior charges in cash. That leaves the new company to which the bondholders turn over the property, holding that property free of the prior charges. The bondholders get preferred stock of the new company at the ratio of $60 par value of new preferred stock for each $100 principal amount of the old bonds. That represents much less than 50 per cent of the indebtedness secured by the bonds, because [fol. 913] there is over five years back interest which is unpaid.

In other words, the bondholders are taking less than 50 cents on the dollar in new preferred stock.

The Coast Line guarantees all of the preferred stock. The Coast Line has to pay up $3,000,000 plus in cash, has to guarantee the new preferred stock and then gets the common stock in the new company. It is a very simple scheme for carrying out the arrangement between the bondholders and the Coast Line." (Commission's Exhibit A, pages 147-148.)

* * * * * * *

"* * * The price payable by the Coast Line is the equivalent of about $8,500,000. It is three million six or seven hundred thousand dollars in cash, and there is the new preferred stock of a par value of about $5,118,000, but it will be worth approximately five points less than par as soon as it has brought the dividends for one year; and that figures in $8,500,000 from the $15,000,000 of obligations ahead of the stockholders. In other words, the Coast Line would have to approximately double the price that it is paying for this property before the stockholders would get a 'look-in'.

One of the principal things that the Commission perhaps will consider is the fairness of that price of $8,500,000. The only real point the stockholders have made is that that is a ridiculous price.

The first point bearing on the price: This price does not mean any valuation for rate-making purposes, any capitalization, anything like that. It must mean a price that somebody is willing to pay for the property; and of course the best evidence of what a sale price is is what somebody is willing to pay for it.

[fol. 914] The bondholders' committees were organized in 1921. The personnel of those committees is quite unusual for a matter of this size involving the amounts that are involved in this matter. The record shows the personnel of the various committees, and I need not mention them. Many of them are known to the Commission.

Another unusual feature of the reorganization is the efforts that have been made by those committees to realize something out of this property. In 1921 they tried to do something for the bondholders. They first considered scrapping the property and taking the scrap value of it. It did not seem best to scrap it, because the court seriously

opposed any such move, and we felt that probably this Commission would oppose scrapping.

The second move was an attempt to sell it to the State of Georgia and there was a lot of propaganda, but it did not seem to work.

The third move was to get a $10,000,000 loan from the government, which amounted to a sale of the property to the government. That would have paid off the obligations, and the government would have been the only creditor in the amount of $10,000,000. That did not go through.

Then they considered the various railroads that might be interested in acquiring it. There were long negotiations with the Seaboard. They tried out the Frisco, but the Frisco was not interested. Several private individuals made tentative offers around 40 and 45 cents on the dollar, but they were never able to come through with any firm offer; and then negotiations started last fall with the Coast Line. The Coast Line had been approached before, but had not shown any interest, and the real negotiations started some time, I think, last November. They reached their crux in [fol. 915] the agreement of February 23rd of this year. In other words, all of the possible purchasers of this property, the State of Georgia, the Federal Government, the various railroads, have been approached and offers have been sought from them; and the best offer is the offer made by the Coast Line.

Commissioner Woodlock: Was that the largest offer in money, or was it the best offer, taking into consideration the character of the bidder, and so forth?

Mr. Fowler: It gave the bondholders the most money on the dollar.

Commissioner Woodlock: Nobody offered any more than the Coast Line, in money?

Mr. Fowler: We figured the Seaboard offered about 36 cents on the dollar. That was never a firm offer that we could accept or reject. There were negotiations on a tentative set-up that was complicated with a sliding scale of dividends that we figured out at that time would be about 36 cents on the dollar, and Mr. Warfield never told us that we could take or leave that offer.

The private individuals who talked with us at all talked around 40 and 45 cents on the dollar. The Coast Line offer,

I believe, started around 45 to 50 cents on the dollar; and after a good deal of trading it was finally raised to 60 cents on the dollar.

Commissioner Meyer: I notice you mentioned the Federal Government as one of the possible purchasers. You did not consider that the Federal Government ever made an offer, did you?

Mr. Fowler: No. By that I meant we tried to get the Government to loan us $10,000,000, back in 1922, and we should have considered that as practically a sale of the [fol. 916] property to the Federal Government.

Commissioner Meyer: But the sale did not go through?

Mr. Fowler: It did not.

The Coast Line offer was the highest offer. You may perhaps think that that means the Coast Line was "stung"; but it seems apparent that the property is worth more to the Coast Line than it is to anybody else.

Commissioner Eastman: You just said that this price is not the rate-making value. When it comes to determining recapture, I suppose the Coast Line will reckon its property at the full amount found by the Commission for rate-making purposes, and it will thereby reduce the amount payable on recapture, if any is due?

Mr. Fowler: I would rather have Mr. Elliott, General Counsel for the Coast Line, deal with that feature of the situation.

The second factor that has been mentioned as bearing on the price is the valuation made by this Commission. That is upwards of $24,000,000. At the time it was made the Commission said, or Mr. Potter stated very strongly that it was a foolish valuation because the property could not actually be sold to anybody for $10,000,000.

Com. Meyer: No, but the rest of us thought that if you had a chance to earn on it, you should.

Mr. Fowler: Yes; and that is the only importance of that valuation. If a price offered by a company were higher than the valuation, it might have some bearing, because it would mean that the company buying was doing a foolish thing. It could go out and build the property more cheaply than it could acquire. But when the valuation is higher than the price the company is paying, it simply means that the [fol. 917] property is not worth what was paid for it for

the purposes of sale." (Commission's Exhibit A, pages 149-154.)

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"My first point, then, is that the stockholders have no standing, because the price of $8,500,000 is a fair price, and it is clearly true that the price cannot be raised to over $15,000,000 and that, therefore, the stockholders can have no interest in any price that would be paid by the Coast Line or by any other purchaser." (Commission's Exhibit A, page 159.)

• • • • • • •

"A third point has already been suggested, and that is the foreclosure proceedings in the Federal court. Really there are two transfers involved here. The first one is the sale in the Federal court whereby the bondholders acquire the property from the old company. The second transfer is the transfer from the bondholders to the Coast Line.

That first transfer has taken place subject to the ability to carry out the second transfer. The first transfer is a matter which is entirely within the jurisdiction of the Federal court. It has taken the form of a foreclosure proceeding, a time-honored procedure. This Commission I do not believe has any power to review that proceeding, directly or indirectly. I think it must look solely at the second transfer, from the bondholders to the Coast Line Railroad, the buyer. I say, look upon the second transfer as a transfer to the Coast Line. Of course this is a transfer to the subsidiary, the common stock of which will be owned by the Coast Line." (Commission's Exhibit A, page 160-161.)

• • • • • • •

[fol. 918] "• • • The Coast Line is acquiring this property. The Commission, in its tentative plan of consolidation, has assigned the property to the Coast Line. With a non-voting preferred stock the Coast Line has full control over the property as long as there is no default on the preferred stock dividend. If you had a voting preferred stock, the integration of the property into the Coast Line System would be much less complete and the tentative plan of con-

solidation would not be carried out so completely as it is under the present plan." (Commission's Exhibit A, pages 164-165.)

• • • • • • •

"Commissioner Woodlock: At what value do you propose to take that no-par stock into capital account?

Mr. Fowler: That question I would prefer to leave to Mr. Elliott who will speak for the Coast Line. That is a Coast Line matter." (Commission's Exhibit A, page 165.)

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Material Portions of Argument of Mr. George B. Elliott, General Counsel of Atlantic Coast Line Railroad Company

"As Mr. Fowler has indicated, the reorganization committee has made every possible effort to dispose of it [the Atlanta, Birmingham, & Atlantic properties]. It has been hawked around. The Seaboard Air Line has been sought as a purchaser and nothing accomplished; the Frisco—nothing accomplished; individuals—nothing accomplished. The only possible way, so far as present indications are concerned, the only possible method of continuing the property, is to dispose of it to the Atlantic Coast Line.

The method of disposing of it, as Mr. Fowler has indicated, is by foreclosure sale of the property, its acquisition [fol. 919] by purchasers representing the bondholders, their creation of a new corporation under the laws of Georgia—and this is all set out in the record and in the statement of facts in the brief—and the acquisition of the control of that new company through the purchase of its common stock for the Atlantic Coast Line." (Commission's Exhibit A, page 176.)

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"Commissioner Eastman: What was the upset price fixed?

Mr. Elliott: $2,005,000 [$4,500,000]. We bid 4½ million. The contract was made with the bondholders at that time, February 23rd, gave them authority to bid up to 4½ million dollars, which would give the bondholders who do

not assent to the plan $52.10 on their bonds. The bondholders who did assent get $60 in preferred stock, and the bondholders who do not assent come in on a distributive basis which produces about $52.10. I do not know the total number of bonds in now, but there was over 95 per cent of the bonds." (Commission's Exhibit A, pages 179-180.)

* * * * * * *

"Commissioner Woodlock: I asked Mr. Fowler at what you proposed to state the capital account of the new property represented by 150,000 shares of non-par stock.

Mr. Elliott: Do you have in mind, stated on the books of the Atlanta, Birmingham & Coast, or the Coast Line?

Commissioner Woodlock: The new company.

Mr. Elliott: I think it would be stated at what the road and equipment account of the A. B. & A. Railway is stated.

Commissioner Eastman: That is not the present rule. The present rule is that it shall be stated on the balance [fol. 920] sheet at the market value of the securities returned to the property at the time they were passed over.

Mr. Elliott: I believe the Commission has under consideration the adjustment of its accounts. Wherever it is to be set up, it will be set up so that you can see what was paid for it and what the original cost was.

Commissioner Eastman: That is one suggestion. We have the question under consideration; that is true.

Mr. Elliott: I understand that you have the question under consideration now, and of course whatever the Commission's decision is we will have to meet it. I take it as a fact that if the Commission finds that the road and equipment account should be so many millions of dollars, the change of ownership of the common stock in the property would not change your figure. I rather think that when you reach the final conclusion there will be a record by which the original cost of the property, if obtainable, will be carried forward on the books. If not, you will use the basis you have been using in the past for such purposes.

Commissioner Eastman: How do you arrive at the number of these shares.

Mr. Elliott: In a sense it was expediency. I do not know that any definite or specific calculation has been made, It seems to us relatively a fair proportion. In a sense it was just the proportions between the non-par stock, whatever

that stock is, and then the number of shares represent the equity in the property after the $5,200,000 preferred is protected; and if it is only $3,670,000 that is to be paid in cash, it would have a value of about $24 a share.. If the earnings of the property be increased so that it would go up, so that its going concern value comes nearer to its reproduction value that you have found, the value of the stock will go up [fol. 921] and it will be shown on the balance sheet without the empirical adjustment that it is worth $100 a share.

Commissioner Eastman: How will the Coast Line carry it on its books?

Mr. Elliott: At what they pay for it.

Commissioner Eastman: What would that be?

Mr. Elliott: That would be cash of $3,670,000—it will run over that, because interest is accruing all the time—the cash that is required to take up the non-assenting bonds. It would be set up at the cost price on the books.

Commissioner Eastman: How do you arrive at that $3,000,000?

Mr. Elliott: The $3,000,000 is interest [taxes] to December 31, 1925, $375,000,000; materials and supplies, and preferred liens which would have been allowed by the Court, $745,000; Birmingham Trust & Savings Bank loan, $114,000; National Bank of Commerce loan, $351,000; United States Government unmatured loan, $100,000; United States Government unmatured equipment note, $650,000; miscellaneous expenses, $600,000. Those items make a total of $3,677,500. Interest is running on all those items all the time." (Commission's Exhibit A, pages 185-187.)

* * * * * * *

Material Portions of Argument of Mr. Carl H. Davis, General Attorney for Atlantic Coast Line Railroad

"Chairman Eastman: They [the Atlantic Coast Line] could buy it [the Atlanta, Birmingham & Atlantic property].

Mr. Davis: We could go down and pay $4,500,000 in cash and take it.

[fol. 922] Chairman Eastman: Is not that equivalent to saying the Atlantic Coast Line is making the purchase, is providing the means for the purchase, and the bondholders are not themselves providing the compensation for this property? That is being provided by the Coast Line.

Mr. Davis: That is under the contract. What the Atlantic Coast Line is going to do is this——

Chairman Eastman: I am not much of a lawyer but when one party buys something but the money is furnished by a third party, is not the third party the real buyer?

Mr. Davis: If you mean, if your Honor please, whether this is an application by the Atlantic Coast Line to get control of the new corporation, I say yes, sir, that is what we come here and ask for, but we want that new corporation to have something when we get control of it. The new corporation comes in and says we want to get hold of this property.

The net result at the end is going to be under this application that the Atlantic Coast Line is going to be in control of the Atlanta, Birmingham & Coast Railroad, which is going to own the property of the Atlanta, Birmingham & Atlantic. That is going to be the other end of it.

Chairman Eastman: Is not there some law to the effect that if I was ostensibly buying some property but the money was provided by Commissioner Meyer who is giving me the money, that he is really buying the property and not me?

Mr. Cotterill: That is known as the principle of resulting trusts.

Commissioner Meyer: I hope the Chairman's view of the law is sounder than the assumption on which it is based.

Mr. Davis: These people, take the bondholders, take the property, $3,600,000 subject to the first and refunding mort-
[fol. 923] gage. They are then going to sell that property to the Atlanta, Birmingham & Coast subject to the $3,600,000 and first and refunding mortgage.

The Atlantic Coast Line is going to furnish the Atlanta, Birmingham & Coast with $3,600,000 with whch to pay those prior liens. The first and refunding mortgage is going to be paid off and the bonds are going to pay off the $4,500,000.

Chairman Eastman: So far as there is any cash in the transaction that is put up by the Atlantic Coast Line.

Mr. Davis: Yes, eventually. The plan that sets out that the bondholders' committee may put it up. If so we will reimburse them, but the net result at the end is that the Atlantic Coast Line is going to be in control. It has got to pay—it is different from stockholders—it has go- to pay its

debts. Stockholders do not, according to Mr. Cotterill." (Commission's Exhibit A, pages 260-262)

* * * * * * *

Material Portions of Further Argument of Mr. George B. Elliott, General Counsel of Atlantic Coast Line Railroad Company.

"If you do approve it, the plan goes forward and the two purchasers will make a deed conveying what they have received from the special master to the new company. Incidentally when they get that deed from the Special Master they have got to surrender the bonds and payment for it and to provide the cash to take up any dissenting bonds that do not come in. Having done that they will make a deed to the new company, the Atlanta, Birmingham & Coast. In consideration of making a deed to the Atlanta, Birmingham & Coast they will be issued $2,500,000 preferrd stock to pay for the property turned over. The prop- [fol. 924] erty will be turned over to the new company subject to the lien of the first and consolidated mortgage still outstanding and subject to $3,600,000, which will be paid off. The new company will sell the common stock to the Atlantic Coast Line for $3,677,000 plus other charges, whatever they may amount to." (Commission's Exhibit A, pages 290-291)

[fol. 925] [File endorsement omitted.]

Endorsed on cover: File No. 39,425. N. Georgia, D. C. U. S. Term No. 9. Atlanta, Birmingham and Coast Railroad Company, Appellant, vs. The United States of America and the Interstate Commerce Commission. Filed March 20, 1935. File No. 9 O. T. 1935.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. [redacted] 9

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT BY APPELLANT OF THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

CARL H. DAVIS,
JOHN A. HYNDS,
ROBERT C. ALSTON,
WILLIAM HART SIBLEY,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 797

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT BY APPELLANT OF THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW UPON APPEAL THE ABOVE ENTITLED CAUSE.

(a) The Statutory Provisions Sustaining the Jurisdiction.

Appellant relies upon Section 238 of the Judicial Code as amended by the Act of Congress of February 13, 1925, (Chapter 229, 43 Stat. 938, 28 U. S. C. A. 345), and also

upon the Urgent Deficiencies Act of October 22, 1913, (Chapter 32, 38 Stat. 219, 220, 28 U. S. C. A. 47a) as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled cause upon appeal.

(b) The Decree Sought to be Reviewed.

The decree appealed from is dated December 10, 1934, entered and filed of record December 14, 1934. The petition for appeal is presented February 6, 1935. The decree is attached hereto as Appendix I.

(c) Nature of the Case and of the Rulings of the Court.

Related causes arising out of this situation were before the Supreme Court in *United States* v. *Atlanta, Birmingham & Coast Railroad Company,* 282 U. S. 522, and before the United States District Court on two previous occasions in *Atlanta, Birmingham & Coast Railroad Company* vs. *United States,* 28 Fed. (2d) 885, and *Atlanta, Birmingham & Coast Railroad Company* vs. *United States,* 37 Fed. (2d) 401. The decree herein appealed from is reported as *Atlanta, Birmingham & Coast Railroad Company* vs. *United States,* not yet reported. (See Appendix I.) The facts are fully stated in the above opinions.

Prior to February 23, 1926, the properties of Atlanta, Birmingham & Atlantic Railway Company, herein sometimes referred to as the Old Company, were in the hands of a receiver appointed by the United States District Court for the Northern District of Georgia in suits instituted against it by its creditors and trustees under mortgages executed or assumed by it. On February 23, 1926, there was executed by representatives of the bondholders and by Atlantic Coast Line Railroad Company the agreement of February 23, 1926.

Under this agreement the bondholders of the Atlanta, Birmingham & Atlantic Railway Company were to bid at foreclosure sale for the properties of the Old Company and its receiver and, if successful, were to organize a New Company under the laws of the State of Georgia. The New Company was to have authority to issue non-voting, five per cent. preferred stock of $100.00 par value and in an amount sufficient to provide $60.00 of preferred stock for each $100.00 of bonds of the Old Company outstanding, and also to issue 150,000 shares of voting no par common stock, and was to issue said stock, common and preferred, in acquiring the said properties from the purchasers at foreclosure. The Old Company, or its receiver, had outstanding obligations shown in Exhibit A to said agreement and then estimated at $3,677,500.00, but now ascertained to be $4,248,413.76, having priority over the bonds of the Old Company. The Atlantic Coast Line Railroad Company agreed to furnish funds with which to pay such amounts already matured and to provide for the payment, at maturity, of such as were not yet due, and also to guarantee the five per cent. dividend on the preferred stock, and the retirement value thereof, which is not less than par value in any circumstances, and in others, $103.00 per share plus accrued dividends. The bondholders were to convey to the New Company the properties acquired at foreclosure subject only to such of the items included in said Exhibit A as might not, at the time of such conveyance, have been paid because not yet matured and the New Company was to pay for said properties by issuing to the bondholders all of its stock, common and preferred. The preferred stock, guaranteed as aforesaid, was to be delivered by the Committee to the bondholders in exchange for their bonds, and the entire 150,000 of voting common

stock was to be sold by the purchasers to Atlantic Coast Line Railroad Company.

The agreement of February 23, 1926, was made the basis of the Plan of Reorganization, which was adopted by the bondholders. This Plan was adopted for the purpose of making the agreement effective.

To accomplish this Plan the bondholders, acting for the Atlanta, Birmingham and Coast Railroad Company yet to be organized, filed an application with the Interstate Commerce Commission—Finance Docket No. 5454—seeking authority to carry out the plan and to issue the Stock. Atlantic Coast Line filed an application—Finance Docket No. 5470—seeking authority to acquire control of the Atlanta, Birmingham and Coast Railroad Company and to execute the guaranty contemplated by the plan. General authority to carry out the plan was given by the Commission in its report and order of October 26, 1926 (117 I. C. C. 181). Thereafter, the Atlanta, Birmingham and Coast Railroad Company was organized and filed its application, adopted the one theretofore filed for its account, and the Commission entered its order of December 21, 1926 (117 I. C. C., 439) authorizing the consummation of the plan.

This order of December 21, 1926 contained the following condition:

> "Provided, however, and authority to issue said stock is granted upon the express condition, that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of Road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

As of January 1, 1927, the property of the old Atlanta, Birmingham and Atlantic Railway Company and its receiver was conveyed to appellant. Prior to this conveyance the Atlantic Coast Line Railroad Company had paid, or provided for, all of the outstanding claims of the Old Company, or its receiver, having priority, so that the Atlanta, Birmingham & Coast Railroad Company received the property free of liens.

In June, 1927, appellant submitted to the Interstate Commerce Commission opening entries to be set up in its accounts according to said condition and the rules and regulations of the Interstate Commerce Commission. Approval of the figures proposed by appellant for these opening entries on its books was denied by the Commission's Bureau of Accounts and appellant was ordered to set up, in its Road and Equipment Account, at approximately $7,000,000, the 640 miles of railroad and other property which it had so acquired and which property had been, without objection by the Commission, carried in the accounts of the old Atlanta, Birmingham and Atlantic Railway Company, up to and including December 31, 1926, at a figure in excess of $38,000,000. Appellant filed before the Interstate Commerce Commission petition for a hearing by the Commission and for a withdrawal of the order of its Bureau of Accounts. This petition was denied by the Commission without a hearing, by its order of April 9, 1928. Thereupon appellant filed in the District Court of the United States for the Northern District of Georgia, a bill seeking an injunction of the order of the Commission and that Court in its opinion and decree of October 26, 1928, construed the condition of the Commission's order as requiring that the property be set up at its fair cash value (28 Fed. (2d) 885) and enjoined all persons interested in the enforcement of said order and their officers and agents from enforcing the

same. No appeal was taken from this decree of said District Court. The Commission then ordered a hearing and made a report dated October 9, 1929, in which it stated that the meaning of the said condition in its order of December 21, 1926, was something entirely different from the meaning of that condition as fixed by the said District Court in its decree of October, 1928 (158 I. C. C., 6). This action by the Commission was attacked by appellant in a bill to set aside and enjoin the same, which was filed in the said District Court, and that court again enjoined, by its decree of January 18, 1930 (reported in 37 Fed. (2d) 401), the action by the Commission set out in its report dated October 9, 1929.

Appeal was taken to the Supreme Court of the United States and the action of the lower court was by that court reversed on the ground that the Commission had issued no formal order. (*United States* v. *Atlanta, Birmingham and Coast Railroad Company*, 282 U. S. 522.)

Thereafter the Commission on its own motion entered upon a further investigation to which it gave a new docket number—Docket No. 25170. After hearing, at which witnesses for appellant testified as to the value of the property acquired by it and at which a witness from the Commission's Bureau of Finance testified as to the value of the securities issued by appellant in exchange for the property, the Commission issued its report and order of July 9, 1934 (201 I. C. C. 645). In the report on which this order is based, the Commission apparently abandons its contention as to the meaning of the condition in its order of December 21, 1926 (which contention had been denied by the District Court), and based its July 9, 1934, report on the finding—contrary to all of the evidence in the record—that appellant received its property subject to the debts amounting to $4,248,413.76, theretofore paid or provided for, in accord-

ance with the plan, by Atlantic Coast Line Railroad Company. This order of July, 1934, reads as follows:

> "A hearing and investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;
>
> "*It is ordered,* That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to eliminate from account 751, 'Capital Stock', all liability on account of non-par common stock in excess of $4,248,413.76.
>
> "*It is further ordered,* That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to state the balance in account 701, 'Investment in road and equipment', in accordance with the classification of investment in road and equipment as provided under account 41, 'Cost of road purchased', and in conformity with the preceding paragraph hereof.
>
> "*And it is further ordered,* That this order shall take effect and be in force from and after 30 days from the date of service hereof."

Appellant contends that under the facts and under the proper construction of the condition in the order of December 21, 1926, hereinabove quoted, appellant is entitled to set up in its balance sheet Account 701 (Investment in Road and Equipment) a figure fairly representing, as of January 1, 1927, the 640 miles of railroad and other property acquired by it free of liens in exchange for its stock, common and preferred. Appellant has set up on its books its Road and Equipment Account at $24,010,145.37, which figure is based on the valuation made by the Commission in 1914 of the property acquired by appellant in 1927, plus the net of additions and betterments between said dates. The

Commission, by its report and order here attacked, holds that its valuation so made is not evidence of the market or exchange value of the property so acquired by appellant, and by its order here attacked, requires appellant to set up its common stock at $4,248,413.76 and to set up its preferred stock at $5,180,300, or a total of $9,248,713.76. This is, substantially, the exact figure, use of which was enjoined by the District Court of the United States by its decree of October, 1928, above referred to, and results in the requirement by the Commission that appellant set up its Road and Equipment account at $6,729,896.03.

Appellant submits that this figure, so required by the Commission, has no fair relation to the value of the property acquired by it and is contrary to all of the evidence in this record, and that the order of the Commission, fixing this figure, is arbitrary, capricious, and is not supported by substantial evidence in this record; and that, therefore, the said order should be enjoined.

(d) Cases Sustaining Jurisdiction.

Interstate Commerce Commission vs. *Goodrich Transit Co.*, 224 U. S. 194;
I. C. C. v. *L. & N. R. Co.*, 227 U. S. 88, 91;
Kansas City Southern Ry. Co. vs. *United States*, 231 U. S. 423;
B. & O. v. *United States*, 264 U. S. 258, 265-6;
United States vs. *Atlanta, Birmingham & Coast R. Co.*, 282 U. S. 522;

Respectfully submitted,

CARL H. DAVIS,
JOHN A. HYNDS,
ROBERT C. ALSTON,
WM. HART SIBLEY,
Solicitors for Atlanta, Birmingham & Coast R. R. Company.

APPENDIX I.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity.

No. 767.

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Final Decree.

This case came on for hearing for final decree before a court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable W. I. Grubb and Honorable E. Marvin Underwood, District Judges, and evidence and argument were heard. The court took time to consider, and now, being fully advised, our conclusions are stated as follows:

In the proceedings heretofore had touching the accounting entries upon the books of complainant here in controversy, the Interstate Commerce Commission has taken the broad view that in the negotiations by which complainant acquired its railroads, the reorganization committee and its members through whom the title passed ought to be ignored, and the matter viewed as though Complainant had dealt directly with Atlantic Coast Line Railroad Company, given to it its whole common stock in exchange for the cash payments made by Atlantic Coast Line Railroad Company, by which the title was freed of incumbrances (other than the

new preferred stock) and which cash was thus in effect paid to complainant for its common stock. This court, on the other hand, has viewed the transaction more narrowly, noting that the title to the railroad was passed to the members of the Reorganization Committee subject to the incumbrances before the complainant was ever organized, that the Atlantic Coast Line Railroad Company arranged with them to pay off the incumbrances and to receive therefor the common stock when issued, and that months afterwards, upon the organization of complainant, it issued its preferred stock to the Reorganization Committee for distribution to the bondholders of the old company, and its entire common stock in the name of the Atlantic Coast Line Railroad Company, at the direction of the Reorganization Committee, in return for which it received from the Committee a deed to the railroad properties. This deed was expressly made subject to such of the incumbrances as had not therefore been discharged. All were in fact discharged at the time of its delivery, except some relatively slight items not then due, as to which the Atlantic Coast Line Railroad Company then delivered to the Receiver, not to complainant, its commitment for future discharge, which was carried out. In the view of the court the complainant paid for the railroad its entire capital stock, and received for its common stock the value of the railroad less the par of the preferred stock, making it necessary to value the property received and to subtract the par of the preferred stock in order to find what was received for the common stock according to the accounting rules of the Commission and according to the words of the condition in the consent of the Commission to the reorganization transaction.

We do not think the views of the court as heretofore expressed are either *res judicata* or the law of the case on the present bill. They have no more weight than their reasonableness entitles them to. We are not dissatisfied with them, but find it unnecessary to reassert them, because, while the Commission in making the order now under attack adhered to its former broad view that the complainant received for its common stock what the Atlantic Coast Line Railroad Company paid out in cash to disencumber the

property and that no valuation of it was necessary; nevertheless it has also valued it, in conformity with the view of the court, at such a value as that subtraction of the par of the preferred stock gives the same figures for the common stock as were reached originally by the Commission. We do not discover any breach of law in arriving at the value. As a finding of fact it is binding in this court. In either view of the transaction of reorganization, the figure set up by the Commission in the attacked order is unassailable.

It is theerfore considered and adjudged and decreed by the court that the prayers of the petition be denied, and the injunction sought be refused, and the bill dismissed at the cost of complainant.

This the 10th day of December, 1934.

SAM'L H. SIBLEY,
United States Circuit Judge,
W. I. GRUBB,
United States District Judge,
E. MARVIN UNDERWOOD,
United States District Judge,

Filed in Clerk's Office 14th day of Dec'r, 1934. J. D. Steward, Clerk.

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CHARLES ELMORE

In the Supreme Court of the United States

OCTOBER TERM, 1935

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY,
Appellant,

VERSUS

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellees.

No. 9

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF ON BEHALF OF ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY

CARL H. DAVIS,
JOHN A. HYNDS,
ROBERT C. ALSTON,
WM. HART SIBLEY,
Attorneys for Atlanta, Birmingham and Coast Railroad Company

October 14, 1935. Atlanta, Georgia.

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In the Supreme Court of the United States

OCTOBER TERM, 1935

ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY,
Appellant,

VERSUS

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellees.

No. 9

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF ON BEHALF OF ATLANTA, BIRMINGHAM AND COAST RAILROAD COMPANY

I.

REFERENCES TO OFFICIAL REPORTS AND OPINIONS DIRECTLY CONCERNING THIS CAUSE

1. Docket No. 12964. Consolidation of Railroads. Decided August 3, 1921—63 I. C. C. 455—460543.
2. Valuation Docket No. 1. Atlanta, Birmingham & Atlantic Rd. Co., Georgia Terminal Company and Atlanta Terminal Railroad Company, decided July 20, 1923—75 I. C. C. 645.
3. Finance Docket No. 5454 (including No. 5470 also), Reorganization and Control of Atlanta, Birmingham and Atlantic Railway Co., decided October 26, 1926, 117 I. C. C. 181.
4. Finance Docket No. 5454. Reorganization and Control of Atlanta, Birmingham and Atlantic Railway Co., decided December 21, 1926, 117 I. C. C. 439.
5. Finance Docket No. 5454. Reorganization and Control of Atlanta, Birmingham and Atlantic Railway Co., decided April 11, 1928. (Not reported.)
6. Atlanta, Birmingham and Coast Railroad Company v. United States, et al, United States District Court for the Northern District of Georgia, decided October 26, 1928—28 Fed. (2d) 885.
7. Finance Docket No. 5454. Reorganization and Control of Atlanta, Birmingham and Atlantic Railway Company, decided October 9, 1929, 158 I. C. C. 6.

8. Atlanta, Birmingham and Coast Railroad Company v. United States, et al, United States District Court for the Northern District of Georgia, decided January 18, 1930, 37 Fed. (2d) 401.

9. United States, et al, v. Atlanta, Birmingham and Coast Railroad Company, decided February 24, 1931, 282 U. S. 522.

10. Docket No. 25170. Accounting for Capital Items (In re: Atlantic Coast Line Railroad Company and Atlanta, Birmingham and Coast Railroad Company), decided July 9, 1934, 201 I. C. C. 645.

11. Atlanta, Birmingham and Coast Railroad Company v. United States, et al, United States District Court for the Northern District of Georgia, decided December 14, 1934. (Not reported, but see Record 339.)

II.

STATEMENT AS TO JURISDICTION

Upon the presentation of the petition for allowance of appeal in this cause appellant filed a typewritten statement, particularly disclosing the basis upon which it was contended that this Court has jurisdiction to review the decree in question. Said statement was in conformity with the requirements of paragraph 1 of Rule 12 of the Revised Rules of Practice of this Court. This statement was duly served upon all opposing counsel, and on April 8, 1935, this Court noted probable jurisdiction in this case.

III.

STATEMENT OF THE CASE

The ultimate question involved in this case is:

> "Did the Interstate Commerce Commission correctly and lawfully order that the Atlanta, Birmingham and Coast Railroad Company should, in opening its books of account, show account No. 701, 'Investment in Road and Equipment,' at $6,729,896.03?"

This is an appeal from a final decree of the United States District Court for the Northern District of Georgia (presided over by Mr. Circuit Judge Sibley, Mr. District Judge Grubb and Mr. District Judge Underwood) entered on the 14th day of December, 1934 (R. 339; not yet reported).

This decree was rendered upon a bill filed by Atlanta, Birmingham and Coast Railroad Company against United

States of America, et al, on August 30, 1934 (R. 1, et seq.). The purpose of the bill was to enjoin an order of the Interstate Commerce Commission entered on July 9, 1934, in its docket No. 25170 (R. 27-61). A copy of said order of the Commission then entered it as follows:

> "A hearing and investigation of the matters and things involved in this proceeding having been had, and the Commission having, on the date hereof, made and filed a report containing the findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;
>
> "It is ordered, That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to eliminate from account 751 'Capital stock,' all liability on account of non-par common stock in excess of $4,248,413.76.
>
> "It is further ordered, That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to state the balance in account 701, 'Investment in road and equipment,' in accordance with the classification of investment in road and equipment as provided under account 41 'Cost of road purchased,' and in conformity with the preceding paragraph hereof.
>
> "And it is further ordered, That this order shall take effect and be in force from and after 30 days from the date of service hereof.
>
> "By the Commission. George B. McGinty, Secretary (Seal)." (R. 61).

The District Court denied the injunction prayed for. (R. 339-341).

Analysis of the Above Order of the Interstate Commerce Commission.

The aforementioned order of the Commission is not clear unless there is taken into consideration previous statements of the Commission.

The Commission in its report "Reorganization and Control of Atlanta, Birmingham & Atlantic Railway Company," 117 I. C. C. 439 at pages 442-43 ordered:

> "That the Atlanta, Birmingham & Coast Railroad Company be, and it is hereby, authorized to issue not exceeding $5,180,344.07 of its preferred capital stock and not exceeding 150,000 shares of its common capital stock without nominal or par value; said preferred and common stock to be used for the purposes specified in the application recorded under Finance Docket No. 5454 and in the report aforesaid:
>
> "*Provided, however,* and authority to issue said stock is granted upon the express condition that, for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

In order to find what was the amount received for the common stock the Commission finds in its last report (July 9, 1934; 201 I. C. C. 645) at 671:

> "We find that the market or fair cash value of the properties in question did not exceed the sum of $9,428,713.76, as of January 1, 1927." (R. 60).

The figure $9,428,713.76 is the sum of the par value of the preferred stock (said preferred stock was reduced from $5,180,344.07 to $5,180,300), plus the amount which the Commission found had been expended by the Atlantic Coast Line Railroad Company in the payment of the items specified in Exhibit A to the agreement of February 23, 1926 (R. 83). Those items are there stated to aggregate $3,677,500, but the Commission found they were actually at the time of its report on July 9, 1934, $4,248,413.76.

When these figures are analyzed as they are at record page 213, they require that account 701—"Investment in road and equipment"—be set up at $6,729,896.03 and the other assets of the Company be set up at $2,698,817.73. That balances the figures used in setting up the capital stock account—751—wherein the preferred stock is set up at $5,180,300 and the common stock at $4,248,413.76.

History of the Property Involved—Receivership of Property of Atlanta, Birmingham & Atlantic Railway Co.

The property which is involved in this case is that which had been previously owned by the Atlanta, Birmingham and Atlantic Railroad Company, Georgia Terminal Company and Atlanta Terminal Railroad Company and which was valued by the Interstate Commerce Commission, reported in Valuation Docket No. 1, 75 I. C. C. 645. The valuation was made on July 20, 1923, as of June 30, 1914. That property was subsequently acquired by the Atlanta, Birmingham and Atlantic Railway Company. (R. 30).

On the 25th day of February, 1921, the property of Atlanta, Birmingham and Atlantic Railway Company was placed in the hands of a Receiver in the United States District Court for the Northern District of Georgia. This was done at the suit of creditors.

AGREEMENT OF FEBRUARY 23, 1926.

On February 23, 1926 (R. 73), there was executed by representatives of bondholders of Atlanta, Birmingham and Atlantic Railway Company of the one part and Atlantic Coast Line Railroad Company of the other part, an agreement looking to the sale, purchase and reorganization of this property.

Under that agreement the bondholders of Atlanta, Birmingham and Atlantic Railway Company, through the committees, were to bid for the property at the contemplated foreclosure sale and were to endeavor to cause said properties to be acquired by the New Company (Atlanta, Birmingham and Coast Railroad Company). The committees were to bid for the property at such sale or sales an amount up to but not exceeding $4,500,000 in addition to the indebtedness of the Old Company prior to the mortgages securing the bonds, equipment obligations and obligations of the receiver substantially as set forth in Exhibit A to the agreement. Exhibit A is set out at page 83 of the record and the amount there stated was $3,677,500. That amount grew into $4,248,413.76 up to the date of the Commission's report in this case—July 9, 1934. The Atlantic Coast Line Railroad Company was to furnish the amounts required to enable the committees or their nominees to qualify as bidders at said sale or sales which the court might require in addition to the deposit of bonds held by the

committees. After confirmation of such sale or sales by the court and upon the acquisition of said properties by the New Company, subject only to such of the items included in Exhibit A hereinabove mentioned as may not have been already discharged, the Atlantic Coast Line Railroad Company was to reimburse the committees or their nominees for payments of such portion of the purchase price of said properties so sold as may have theretofore been required from time to time by the court to be paid in cash.

Each bondholder of the Old Company who had assented to the plan was to receive in exchange for his bond $60.00 par value of preferred stock of the New Company for each $100.00 principal amount of bonds held by him and deposited by him in accordance with the plan. The holders of the bonds who did not assent to the plan were to receive in cash their pro rata distributive share, as fixed by the court, of the proceeds of sale of said properties.

The Atlantic Coast Line was to furnish cash sufficient to meet the respective distributive shares in the proceeds of said sale or sales in respect to any of the bonds which did not assent to the plan, or to reimburse the committees for any amount which may have therefore been paid or provided for that purpose by them. All claims admittedly having, or adjudged to have, priority over any of the mortgages of the Old Company, loans of the Old Company for which bonds of the Old Company had been pledged, equipment obligations of the Old Company held by the United States Government (if it were necessary to pay off the same) and obligations of the Receiver were to be paid in cash by the Coast Line Company upon acquisition of said properties by the New Company, ex-

cept that the obligations of the Old Company and of the Receiver not matured at the time of the acquisition of the properties by the New Company might be assumed by the New Company instead of being paid in cash, but Atlantic Coast Line Railroad Company was required to provide or cause the New Company to provide the necessary cash to pay such obligations as they matured. The obligations referred to were those set out in Exhibit A to the agreement to which reference has been heretofore made.

The Atlantic Coast Line Railroad Company also guaranteed five per cent. per annum dividends on the preferred stock of the New Company of which $5,180,300 was issued and guaranteed the retirement thereof which was not less than par value in any circumstances and in others $103 per share plus accrued dividends.

The property was sold at the foreclosure sale on June 22, 1926. It was purchased by George E. Roosevelt and J. A. Fowler, Jr., on behalf of the Reorganization Committee and on condition that the Interstate Commerce Commission would issue orders conferring authority substantially sufficient to enable the parties to carry out the plan and agreement of reorganization. The sale was reported to the Court and was confirmed upon the condition referred to.

The Reorganization Committees were to convey to the New Company the properties acquired at foreclosure subject only to such of the items included in said Exhibit A as might not, at the time of such conveyance, have been paid because not yet matured and the New Company was to pay for said properties by issuing to the Purchasing Committee for the Bondholders all of its stock, common and preferred. The

preferred stock, guaranteed as aforesaid, was to be delivered by the Committee to the bondholders in exchange for their bonds, and the entire 150,000 shares of voting common stock was to be sold by the purchasers to Atlantic Coast Line Railroad Company. (See opinion of Commission, F.R.* 313 and of Court, F.R. 220, 222). 117 I. C. C. 181-28 Fed. (2d) 885.

PLAN AND AGREEMENT OF REORGANIZATION.

The agreement of February 23, 1926, was made the basis of the Plan of Reorganization, herein sometimes called the Plan, which was adopted by the bondholders, and appears on page 84 of the record in this case. This plan was adopted for the purpose of making the agreement of February 23, 1926, effective (R. 84).

APPLICATIONS TO THE COMMISSION
FINANCE DOCKETS 5454 AND 5470.

Pursuant to the plan and agreement of reorganization, the bondholders' committee filed with the Interstate Commerce Commission its application on behalf of the company to be organized, "pursuant to said plan and agreement of reorganization dated February 23, 1926" (which plan was recited in the application), for the purpose of securing the approval by the Commission of the acquisition and operation by the New Company of the lines of railroad of the A. B. & A. Railway Company and for authority for the issuance by the New Company of preferred stock and common stock in accordance with the Plan (F.R. 111). In this application it was stated that:

*"F.R." indicates "First Record" before this Court in the case of *United States, et al, v. Atlanta, Birmingham and Coast Railroad Company*, 282 U. S. 522.

"Fifth. The purposes and uses of the proposed issue of capital stock are to acquire the lines of railroad and other properties of the Old Company and its Receiver, as aforesaid, and to carry out the plan." (F.R. 113).

Subsequent to the filing of the application on behalf of the New Company just above mentioned, Atlantic Coast Line Railroad Company, on April 12, 1926, filed with the Interstate Commerce Commission its application for authority in accordance with the plan to execute the guaranty of the preferred stock of the New Company and to acquire control of the New Company by the acquisition from the bondholders of the entire issue of common stock of the New Company. This application was given Finance Docket No. 5470 (R. 149).

Pursuant to the requirements of the Interstate Commerce Commission the bondholders filed the return to questionnaire, submitted to them. In that return the following statement appears, among others:

"The reorganization committee, or its nominee, will hold control over the applicant until the consummation of the plan, at which time control will be transferred to Atlantic Coast Line Railroad Company. Control will be in the form of the entire outstanding common stock." (F.R. 260).

FORECLOSURE SALE.

On June 22, 1926, the Special Master offered for sale the properties of the old A. B. & A. Railway Company. At that sale the properties were purchased by the purchasing committee of the bondholders of the old A. B. & A. (R. 6; F.R. 130). The bid of such purchasers was conditioned on the making by the Interstate Commerce Commission of orders con-

ferring authority substantially sufficient to enable the parties to carry out the plan and agreement of reorganization (R. 6-7; F.R. 139). The petition of the purchasers for confirmation of the sale, showing these facts, is set out on page 130 of the First Record and the Special Master's report of sale appears on page 135 of the First Record.

FIRST ORDER OF THE COMMISSION.

Under date of October 26, 1926, the Interstate Commerce Commission entered its first report and order (F.R. 311) 117 I. C. C. 181. By this report and order the Commission approved the agreement of February 23, 1926, and the plan of reorganization, authorized the acquisition by the Atlantic Coast Line of control of the New Company to be organized and stated:

> "There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line is in the public interest. The sentiment in favor of the plan in the territory served by the A. B. & A. is apparently unanimous and earnest. Approval should therefore be given and the necessary authority issued, unless there be something in the terms and conditions of the proposed acquisition, or in the consideration, so inequitable as to require modification in the public interest. We find nothing of this character in the arrangement. It is true that there is wide disparity between the proposed price to be paid by the Atlantic Coast Line for its control of the property and the value of the property viewed as a basis for rate making, but our highest court has distinguished between value for rate making purposes and exchange value. *Galveston Electric Company v. Galveston*, 258 U. S. 388." (F.R. 316-17). 117 I. C. C. 187.

The Commission held:

> "The new company has not been incorporated. We are advised by counsel for the applicants that incorporation under the laws of the State of Georgia is considered desirable, but under those statutes no charter may be issued to purchasers taking over property under foreclosure sale until a master's deed has been executed. To meet this desire, action upon the application of the new company for authority to issue securities and upon the application of the Atlantic Coast Line for authority to assume obligation with respect to such securities will be deferred. Upon receipt of proof of incorporation of the new company, accompanied by a copy of its charter, we will dispose of the remaining applications by supplementary report and order." (F.R. 318, 117 I. C. C. 187).

ORGANIZATION OF ATLANTA, BIRMINGHAM AND COAST RAILROAD CO.

Pursuant to this authority by the Commission, the sale of the properties of the old A. B. & A. and its Receiver to the bondholders' committee was unconditionally approved by the order of the United States District Court entered November 16, 1926, and those properties of the old A. B. & A. were on that day conveyed to the bondholders' purchasing committee (R. 333-335). Thereupon, the said purchasers, George E. Roosevelt and J. A. Fowler, filed application with the Secretary of State of the State of Georgia, asking for a charter for the New company to be organized in accordance with the plan and to acquire the properties purchased by said committee at foreclosure (R. 3-9). The charter was issued by the Secretary of State on November 22, 1926 (F.R. 231). By this charter the new company was given authority, inter-alia,

"for the issue of all or any of said fifty-two thousand shares of preferred and/or said one hundred and fifty thousand shares of common stock for the purpose of acquiring and paying for the property and assets described in article first hereof and for the purpose of carrying out the above-mentioned plan and agreement of reorganization dated February 23, 1926." (F.R. 240).

Pursuant to this charter, the New Company was organized and was authorized to issue $5,180,344.07 par value of preferred stock and 150,000 shares, without par value, of common stock, and the officers of the New Company were authorized to cause to be done such acts or things as were necessary to carry out and observe the agreement of February 23, 1926, and the plan of reorganization (F.R. 245). The New Company then joined in and adopted the application then pending before the Commission (R. 110).

SECOND ORDER OF THE COMMISSION.

Without further hearing the Interstate Commerce Commission, after consideration of the foregoing, made its second report and order (117 I. C. C. 439) under date of December 21, 1926, and authorized the issuance by the New Company of $5,180,344.07 of preferred stock and the 150,000 shares of no par common stock and also authorized the guaranty by the Atlantic Coast Line Railroad Company of the dividends on the preferred stock and the retirement value thereof in accordance with the plan. The authority of the Commission to the New Company for the issuance of its stock was made subject to condition as follows:

"Provided, however, and authority to issue said stock is granted upon the express condition that, for the pur-

poses of the accounting, as provided in the classification of investment in road and equipment in the text of account 41, 'Cost of road purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; *and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor.*" (Italics added). (R. 28; 117 I. C. C. 442).

Account 41, referred to in this condition, is shown on page 52 of the record. It provides:

> " . . . Where the consideration given for the property purchased is other than cash; such consideration shall be valued on a current cash basis," etc.

The construction of this condition, and its application to the facts herein was the actual and controlling issue in the original case.

CONSUMMATION OF THE PLAN.

Pursuant to the authority of the Commission given by the two orders of October 26th and December 21st, 1926, the sale was consummated to the New Company in consideration of its two classes of stock on January 4, 1927 (as of January 1, 1927) (R. 259).

SUBSEQUENT ACTION BY THE COMMISSION LEADING UP TO ITS THIRD ORDER.

The New Company employed Haskins & Sells, Certified Public Accountants, to assist it in preparing its balance sheet and opening its books. Haskins & Sells submitted a tentative balance sheet as of January 1, 1927 (R. 121 et seq.). The bal-

ance sheet so submitted was prepared after consideration of the condition in the order of the Commission of December 21, 1926, and was based on the value of the property received by appellant in exchange for its stock.

This balance sheet was submitted to the Commission and on August 3, 1927, the Commission through letter of Mr. Wylie, its Director of the Bureau of Accounts, directed appellant to reduce its entry in "Investment in Road and Equipment" (Account 701) by $22,390,985.21, or from $29,471,859.00 to $7,080,873.79 (R. 131, 39-40).

The reckoning of the preferred stock at par, or $5,180,-344.07, was not objected to. Mr. Wylie determined that the common stock must be set up at $4,080,699.80, the amount paid by the Coast Line for debts of the Old Company, or its Receiver. From this he deducted the $1,918,117.46 of accrued depreciation, leaving $2,162,582.34. He then deducted this amount from the $24,553,567.55 shown against the common stock, leaving $22,390,985.21, which is the amount by which he says the "Road and Equipment" total of $29,471,-859.00 must be reduced leaving $7,080,873.79 to represent the property acquired by appellant (R. 39-41), a *part* of which property had been valued as of June 30, 1914, by the Commission at $23,242,107.00 (F.R. 160-75 I. C. C. 645).

THIRD ORDER OF THE COMMISSION ENJOINED BY FIRST DECREE OF DISTRICT COURT [28 Fed. (2d) 885].

Appellant, upon receipt of this letter, filed with the Commission its supplemental application (R. 134) and the Statement of Facts (R. 134) showing that under the plan as ap-

proved and carried out, the New Company, appellant, did not and could not receive any part of the $4,080,699.80; that it received for its stock, common and preferred, the property of the Old Company, A. B. & A. Railway Company, that the condition in terms referred to the "amount received" by the appellant for the stock and that the requirement in the letter from Mr. Wylie, above referred to, was contrary to the facts and based on a misconstruction or total disregard of the terms of the provisio of the order of December 21, 1926. Appellant asked that the Commission overrule Mr. Wylie and permit it to show, on its books, as the amount received for its common stock, the value of the property of the Old Company, less the par of the $5,180,344.07 of preferred stock (F.R. 289). It was the property which was "received" for its said shares of stock.

Without a hearing the Commission by its order of April 9, 1928, denied the application (F.R. 10).

FIRST DECREE OF DISTRICT COURT
[28 Fed. (2d) 885, Oct. 26, 1928].

Thereupon, appellant filed in the United States District Court for the Northern District of Georgia its bill (F.R. 1). The Interstate Commerce Commission and the United States answered. After hearing the said Court rendered its opinion and entered its decree of October 26, 1928 [28 Fed. (2d) 885]. In its opinion, after stating the facts, the Court said:

> "Two methods of valuing the common stock are contended for, one, that it was worth the value of the roads acquired, less the value represented by the preferred stock; the other that it was worth what the Coast Line

Company paid for it in cash, $4,080,000. The requirement of the order of December 21st, 1926, that the common stock must be reckoned 'on a basis not in excess of the amount received therefor' comes to the same thing as the requirement of rule 41 and meets the same divergent constructions. It can not be said with accuracy that the money paid by the Coast Line Company was received by the Coast Company for its stock. The Coast Company received for the stock the deed of the bondholders' representatives covering the railroads, and they in turn sold the common stock to the Coast Line Company, and for a consideration not only of $4,080,000 actually paid, but also of heavy guaranties of dividends on the preferred stock over and above its par already allowed in this valuation." [28 Fed. (2d) 886].

The District Court also found that the entry in the account as to "Investment in Road and Equipment"—account 701—*"should be fixed on a basis of the fair cash value of the property acquired by the Coast Company in exchange for its stock as of the date of its acquisition."* [28 Fed. (2d) 885, 887]. (Italics added).

It then decreed:

" . . . *that the equities are with the complainant* and that the order of April 9th, 1928, complained of, in so far as the same fixed the amount at which the complainant is to return its capital stock and its investment in road and equipment, be set aside and all persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant in which said order was entered by the Interstate Commerce Commission stand for further hearing before said Commission." [28 Fed. (2d) 886; Italics added].

FOURTH ORDER OF THE COMMISSION (158 I. C. C. 6).

After the Interstate Commerce Commission had determined not to appeal from the first decree of the District Court above referred to, it set the case for further hearing before its examiner. The Commission made a report on October 9, 1929 (158 I. C. C. 6—Reorganization and Control of Atlanta, Birmingham & Atlantic Railway Company). The headnote of that report is as follows:

> "Upon further hearing, application of Commission's accounting regulations to statement of the investment accounts of the Atlanta Birmingham and Coast Railroad Company as of January 1, 1927, considered and accounting prescribed." (158 I. C. C. 6).

The concluding paragraph of the report is as follows:

> "Upon consideration of the record, as supplemented, we find and conclude that the amount to be included in the balance sheet statement of the New Company representing investment in road and equipment as of January 1, 1927, may not exceed $9,261,043.87. The Company will be expected to adjust its accounts in accordance with this finding within 60 days from the service of this report." (158 I. C. C. 6).

That figure—$9,261,043.87—was the identical figure which had been enjoined by the District Court in its first decree of October 26, 1928 [28 Fed. (2d) 885].

SECOND DECREE OF THE DISTRICT COURT [37 Fed. (2d) 401].

Atlanta, Birmingham and Coast Railroad Company then filed its supplemental bill against the United States, et al, in

the United States District Court for the Northern District of Georgia. Decree was rendered thereon on January 8, 1930, and the District Court by said decree enjoined the above stated action of the Commission (158 I. C. C. 6) determining that it amounted to an order.

APPEAL TO SUPREME COURT OF THE UNITED STATES, 282 U. S. 522.

The Interstate Commerce Commission appealed that decree to this Court—*United States v. Atlanta, Birmingham and Coast Railroad Company*, 282 U. S. 522 (decided February 24, 1931). This Court there held that the action of the Commission reported in 158 I. C. C. 6 and then under consideration did not constitute an order, and reversed the lower court.

DISCUSSION OF REPORT AND ORDER OF INTERSTATE COMMERCE COMMISSION DATED JULY 9, 1934—"ACCOUNTING FOR CAPITAL ITEMS, IN RE: A. C. L. RAILROAD CO. AND A. B. & C. RAILROAD COMPANY.

This is given docket number 25170 and is reported in 201 I. C. C. 645 and at R. 27, et seq. This report gives a resume of the previous actions of the Commission and of the courts. The Commission states that by its order of March 26, 1932, "upon our own motion and without formal pleadings, we entered upon the present inquiry and investigation and made the Coast Line Company and the Coast Company respondents thereto." (R. 30).

The findings of fact leading up to the Commission's conclusions which are stated beginning at record page 30, in so

far as they state the history of the proceedings are not inconsistent with what has been herein stated.

The Commission recites that the Atlanta, Birmingham and Atlantic Railway Company (therein referred to as the "Old Company") was the result of a reorganization in 1915 through which it acquired the properties formerly owned by the Atlanta, Birmingham & Atlantic Railroad Company and the latter's lessors, Georgia Terminal Company and Alabama Terminal Railroad Company. (These are the same properties as were valued by the Commission in its Valuation Docket No. 1, 75 I. C. C. 645). The Commission then recites the appointment of a receiver for those properties in 1921 (at that time they were owned by Atlanta, Birmingham & Atlantic Railway Company) and the formation of the agreement of February 23, 1926, the entering of a foreclosure decree on April 30, 1925; the sale under that decree on June 22, 1926; the purchase of the property under that sale by George E. Roosevelt and J. A. Fowler, Jr., on behalf of the Reorganization Committee upon condition that the Interstate Commerce Commission should within a time which in the opinion of the Court would be reasonable, grant authority enabling the execution of the plan and agreement of reorganization pursuant to the pending applications on behalf of the proposed Coast Company and of the Coast Line Company.

The Court conditionally confirmed that sale on June 23, 1926. The Commission made its report on October 25, 1926 (117 I. C. C. 181). The conditions which accompanied the bid were withdrawn and the Court on November 15, 1926, confirmed the sale unconditionally and the properties were thereupon conveyed to the purchasers by deed of the special

master of November 16, 1926, in which the Old Company, the Receiver, and the trustees of the first mortgage and the income mortgage joined. After that conveyance Fowler and Roosevelt as of January 1, 1927, conveyed this property to Atlanta, Birmingham and Coast Railroad Company (see deed, R. 333). This conveyance was made subject to such of the encumbrances mentioned in Exhibit A to the agreement of February 23, 1926 (R. 83), as were not discharged, satisfied or otherwise complied with or removed. The Atlantic Coast Line Railroad Company had discharged and acquired all of those encumbrances which were then due. Evidences of extinction of those liens were delivered to the Receiver together with a check for $1,323,410.88 payable to the order of the Receiver to cover back taxes of the Old Company and interest amounting to $488,929.57 and obligations of the Receiver for material and supplies amounting to $834,481.31, and also a letter of assumption of liability for any additional obligations of the Receiver which might arise (R. 35). The payments by the Coast Line Company and the Coast Company made a total of $4,214,774.42 (R. 35). These afterwards became $4,248,413.79 (R. 38).

The Commission concludes its report (201 I. C. C. 645) at 671 with these words:

> "We find that the market or fair cash value of the properties in question did not exceed the sum of $9,428,-713.76, as of January 1, 1927." (R. 60).

IV.

ASSIGNMENT OF ERRORS

Appellant relies upon each and all of the errors assigned by it and found at record pages 342, et seq., and which are as follows:

The District Court erred in that:

1. It denied the prayer marked "D" of the thirty-sixth paragraph of appellant's complaint, especially so much thereof as prayed that the Interstate Commerce Commission, its officers, agents and employees be permanently enjoined from enforcing its order of July 9, 1934 (201 I. C. C. 645) by which it ordered that:

> "The Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to eliminate from account 751, 'Capital Stock,' all liability on account of non-par common stock in excess of $4,248,413.76";

and in which it further ordered

> "That the Atlanta, Birmingham and Coast Railroad Company adjust its current accounts to state the balance in account 701, 'Investment in road and equipment,' in accordance with the classification of investment in road and equipment as provided under account 41, 'Cost of road purchased,' and in conformity with the preceding paragraph hereof";

and in which it further ordered

> "That this order shall take effect and be in force from and after thirty days from the date of service hereof."

2. By its decree aforesaid the court denied appellant's prayer marked "E" of the thirty-sixth paragraph of said

bill of complaint which sought to have the said order of the Interstate Commerce Commission of July 9, 1934, held to be invalid and illegal upon each of the grounds set forth in appellant's bill of complaint.

3. The court should have found that the order of the Interstate Commerce Commission complained of was arbitrary for that:

(a) It was contrary to the evidence adduced before the Commission in this proceeding;

(b) The Commission based its order on the erroneous finding that the transaction was one in which the Atlanta, Birmingham and Coast Railroad Company sold its shares of stock to the Atlantic Coast Line Railroad Company in consideration of the latter company's furnishing to or for it moneys with which to pay items of prior indebtedness upon said properties; whereas, the Atlanta, Birmingham and Coast Railroad Company issued its shares of preferred and common stock to representatives of the bondholders of the old Atlanta, Birmingham and Atlantic Railway Company in consideration of the conveyance to it, by said representatives, of the properties of the old Atlanta, Birmingham and Atlantic Railway Company and its receiver, free of liens.

(c) It did not give to the valuation made by the Interstate Commerce Commission of the properties acquired by the Atlanta, Birmingham and Coast Railroad Company, which were formerly owned by Atlanta, Birmingham and Atlantic Railroad Company, Georgia Terminal Company and Alabama Terminal Rd. Co., the prima facie effect which the law attributes to such findings.

4. The court should have found that the Interstate Commerce Commission in stating the value of the 640 miles of railroad and other properties to be $9,428,713.76, did not consider the evidence as to cost of con-

struction of the properties acquired by Atlanta, Birmingham and Coast Railroad Company; nor the evidence as to the value of the terminal properties in Atlanta, Georgia and Birmingham, Alabama, acquired by the Atlanta, Birmingham and Coast Railroad Co.

5. The court should have found that the Interstate Commerce Commission did not give any consideration to the value of the properties acquired by the Atlanta, Birmingham and Coast Railroad Company. It should have found that the only witness introduced by the Commission as to valuation stated that he did not consider the value on January 1, 1927, of any of the physical properties acquired by the Atlanta, Birmingham and Coast Railroad Company from Roosevelt and Fowler as of the said date.

6. The court should have found that the sole witness for the Commission as to value stated that he did not reach any conclusion as to the value of any specific pieces of property acquired by the Atlanta, Birmingham and Coast Railroad Company in exchange for its stock.

7. The court should have found that the Interstate Commerce Commission in making its purported valuation left out of consideration the cost of reproduction of the property, and the value of the property as an element in connecting the Atlantic Coast Line Railroad Company with its subsidiaries and the completion of its System, including connection between the Atlantic Coast Line Company's lines and those of the Louisville and Nashville Railroad Company; and that likewise the Commission treated as irrelevant and immaterial its own valuation of this property as of June 30, 1914, although the value was shown to be greater on January 1, 1927, than on June 30, 1914; as to all of which there was ample evidence.

8. The court should have found that the Commission erred in applying to the transaction at hand by which the Atlanta, Birmingham and Coast Railroad Company acquired the properties now owned by it, a rule different from the rule customarily applied by it in cases of similar reorganizations; to the injury of the Atlanta, Birmingham and Coast Railroad Company.

9. The court should have found that the judgment and decree of the District Court in the case of *Atlanta, Birmingham and Coast Railroad Company v. United States of America* [28 Fed. (2d) 885] was res adjudicata as to the nature of the transaction under which the stock of the Atlanta, Birmingham and Coast Railroad Company was issued, as to the meaning of the condition in the Commission's order of December 21, 1926, authorizing the Railroad Company to issue its securities, and as to there being but one question left for determination which was the value of the property received by the Railroad Company in exchange for its stock as of January 1, 1927.

10. The court should have found that the Commission was influenced in its finding by the erroneous idea that the par value of the preferred stock plus the amount paid by the Atlantic Coast Line to the Bondholders' Committee for the common stock was the sole question for determination rather than the value of the property itself, and that the finding of the Commission was arbitrary and void because it treated such par value and price paid as the ultimate fact to be determined.

11. The court should have found that the Commission was laboring under a misconception as to the meaning of the condition "that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor," contained in the Commission's order of December 21, 1926, authorizing the is-

suance of the stock, and that the Commission's finding of value was arbitrary and void because it was necessarily influenced by this misconception.

12. The decree of the District Court appealed from in this cause fails to meet the requirements as to findings of fact and of law as set forth in Federal Equity Rule No. 70½.

13. The decree of the District Court appealed from in this cause is contrary to the evidence.

14. The decree of the District Court appealed from in this cause is contrary to the law.

Summarization of Assignment of Errors and Points to be Relied Upon.

The assignment of errors and the points to be relied upon (R. 352) may be summarized as follows:

The Interstate Commerce Commission erroneously and unlawfully ordered that the Atlanta, Birmingham and Coast Railroad Company should in opening its books of account show Account 701—"Investment in road and equipment"—at $6,729,986.03; and it likewise erroneously and unlawfully ordered that the Atlanta, Birmingham and Coast Railroad Company should adjust its current accounts to eliminate from account 751—"Capital stock"—all liability on account of non-par common stock in excess of $4,248,413.76.

The District Court erred in refusing to grant the prayers of appellant's bill of complaint (R. 25) wherein it prayed that the order of the Interstate Commerce Commission of July 9, 1934, "be held to be invalid and illegal upon each of the grounds" in said bill set out.

SUMMARY OF ARGUMENT

I. The Interstate Commerce Commission values the properties involved at $9,428,713.76 by stating the value of the preferred stock at $5,180,300.00 and determining the value of the no-par value common stock at $4,248,413.76. This prescribes the entries to be made in Account No. 751 "Capital Stock." To determine the balancing entry in Account No. 701 "Road and Equipment" on the asset side of appellant's books it follows that the value of the road and equipment must not exceed $6,729,896.03, "other assets" being $2,698,817.73.

Appellant contends that these figures are not supported by the evidence and are arbitrary and capricious. The cost of the properties obtained by exchange of the entire capital stock of appellant *is not the value of the stock*, but necessarily is the *value of the property itself* as of January 1, 1927. The stock had no value and has now only such value as the properties give it. P. 31.

II. Appellant contends that the fair value of all its properties for accounting purposes is $26,708,953.20. The entry on the asset side in Account No. 701 "Road and Equipment" should be $24,010,135.47, together with "other assets" of $2,698,817.73. The value of Road and Equipment must be determined before the balancing entry on the liability side, "Capital Stock," can be found. The resulting entries in Account 751 "Capital Stock" would then be preferred stock $5,180,300.00, no-par value common stock $21,528,653.20. P. 40.

III. The Interstate Commerce Commission's valuation of the common stock of appellant, which necessarily is the value of the entire railroad properties less the par value of the

preferred stock, does not take into consideration all of the elements of value inherent in the property. P. 41.

(a) The Commission's valuation ignores the element of the value of the property for rate-making purposes. P. 42.

(b) The Commission's valuation ignores the reproduction value of the properties. P. 46.

(c) The Commission's valuation violates paragraph 5(i) of Section 19a of the Act to Regulate Commerce as amended, and ignores prior tacit approval by the Commission of the figures used in the same accounts by the predecessors of appellant. P. 49.

(d) Changes in conditions as of January 1, 1927, did not have the effect of overcoming the prima facie effect of the Commission's valuation as of June 30, 1914, of these properties. P. 52.

(e) The entries required by the Commission's order now under review do not reflect the history and the improved earnings of these properties as of January 1, 1927. P. 60.

(f) No consideration of the strategic value of these properties was given by the Commission, which value was real and inherent in these properties so soon as they came into the control of the Atlantic Coast Line. P. 62.

IV. The valuation provided for in the Interstate Commerce Commission's order is clearly predetermined and the report recites as supporting testimony only *such parts* of the witnesses' statements as tend to give credence to its reasoning. It ignores the ultimate facts of all of appellant's testimony and

is not supported by the witness Boles when his testimony is analyzed. He had *never seen* the properties. Wrong principles of law are applied to incomplete statements of fact as brought out by the testimony and the underlying findings and the theory of the report are improper and unlawful. The application of the valuations found by the Commission leads to impracticable and impossible results. P. 72-82.

V. The law applicable to the case is elementary and plain. This Court will examine the report and order of the Commission, as well as the record before it, to determine whether findings are made on which the jurisdiction of the Commission can rest. This Court will also determine whether *basic intermediate and ultimate* findings have support from the evidence adduced. P. 84.

V.

ARGUMENT

Value of the Property Acquired by Appellant.

It has been previously shown that the property involved in this case is the same as that which was owned by Atlanta, Birmingham and Atlantic Railroad Company, Georgia Terminal Company and Alabama Terminal Railroad Company and then by Atlanta, Birmingham and Atlantic Railway Company and that these properties were valued by the Interstate Commerce Commission in a proceeding known as Valuation Docket No. 1, Atlanta, Birmingham and Atlantic Railroad Company, et al, 75 I. C. C. 645; that the valuation was made July 20, 1923, as of June 30, 1914.

These properties were put up for sale at foreclosure sale and were conditionally bid in and upon the rendition of the decision of the Interstate Commerce Commission—Reorganization and Control of Atlanta, Birmingham & Atlantic Railway Company, 117 I. C. C. 181, the conditions were removed and the sale made absolute. It has also been shown that on December 21, 1926 (117 I. C. C. 439) when the New Company was granted the right to issue shares of preferred and common stock, the authority was granted upon the express condition that

> "for the purposes of the accounting, as provided in the classification of investment in road and equipment in the text of Account 41, 'Cost of Road Purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor."

We have shown that the foreclosure sale was had for the purpose of vesting the title to the properties now owned by the New Company and here involved, in that New Company, to-wit: Atlanta, Birmingham and Coast Railroad Company. The property offered at foreclosure sale was bid off by Messrs. Roosevelt and Fowler as representatives of the Reorganization Committee of the holders of two issues of bonds which affected the property. It was then found that the New Company had not been incorporated and the Commission approved the sale subject to the incorporation of the New Company. The title to this property was conveyed to Messrs. Roosevelt and Fowler as the representatives of the Reorganization Committee and after Messrs. Roosevelt and Fowler and their asso-

ciates had caused the Atlanta, Birmingham and Coast Railroad Company to be incorporated under the laws of Georgia which were applicable to railroad properties sold at foreclosure sale, there was then a meeting in New York on January 4, 1927, to pass the title to this property into the New Company as of January 1, 1927. The evidence is undisputed that at that time the property was conveyed by Messrs. Roosevelt and Fowler to the New Company and the deed is shown in the record as Exhibit No. 16, page 333.

Messrs. Roosevelt and Fowler then owned the shares of preferred and common stock of Atlanta, Birmingham and Coast Railroad Company. They had received those shares of stock from that Company in consideration of the acquisition by it of this property. Roosevelt and Fowler put up no money, or if they put up any money it was barely the qualifying amount with which to bid for the property at the foreclosure sale. The property was purchased and was paid for by "other than cash."

The Interstate Commerce Commission's Accounting Rule No. 41 is as follows:

> "COST OF ROAD PURCHASED.
>
> "This account shall include the cash cost of any road or portion thereof purchased. Where the contract of purchase includes not only road, but also equipment, securities, and other assets, the appraised value of such equipment, securities and other assets shall be deducted from the total cash cost, and the remainder of the cash cost shall be charged to this account. Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash

basis. If the consideration includes the assumption of liabilities, such liabilities shall be included in the determination of the cost at their cash value at the time the contract is made.

"This account shall be used only as a clearing account in which temporarily to carry the cost of road purchased until such time as a plan for distributing such cost to the primary accounts appropriate for the property is approved by the Commission."

It will be noted that the rule provides that

"Where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis."

It is contended by our opponents that this property was paid for in cash. This claim is based upon the agreement of February 23, 1926, which has been referred to and under which the Atlantic Coast Line Railroad Company agreed to pay the items mentioned in Exhibit A to that agreement (R. 83) and there stated at $3,677,500. Those items had priority over the bonds and were called "Priorities." The Atlantic Coast Line was required to provide the money to pay the prior claims which were then due and to contract to pay those which were not then due when and as they became due.

The purchasers at the meeting referred to on January 4, 1927, were in possession of the shares of stock of Atlanta, Birmingham and Coast Railroad Company which they had caused to be organized. The purchasers also turned the 150,000 shares of common stock of Atlanta, Birmingham and Coast Railroad Company over to the Atlantic Coast Line Railroad Company in consideration of the Coast Line's surrendering a substantial amount of the indebtedness referred

to as Priorities which it had purchased and in addition thereto the Coast Line *delivered to the Receiver* for Atlanta, Birmingham and Atlantic Railway Company a check for $1,323,410.88 (F.R. 328) to cover the following items set out in Exhibit A to the agreement of February 23, 1926:

Taxes $488,929.57

Materials and supplies:

(1) Claims prior to receivership (Six months' claims) 355,057.00

(2) Receiver's obligations ..... 479,424.31.

The Coast Line Company also delivered another check for $600,000 to the Reorganization Committee to enable it to pay the last item in Exhibit A to said agreement of February 23, 1926, which was for Receivership, reorganization and miscellaneous expenses and allowances. $600,000 was to be the maximum amount for those items.

All of the items mentioned in said Exhibit A were then provided for by those three things, to-wit:

1. Surrender of cancelled obligations acquired by Atlantic Coast Line Railroad Company;
2. Delivery of the two checks above mentioned; and
3. Assumption by Atlantic Coast Line Railroad of unmatured obligations listed.

In the meantime the sale of these properties at foreclosure had been had as far back as June 22, 1926. The Interstate Commerce Commission had approved the acquisition of the property by the New Company (117 I. C. C. 181). The pur-

chasers, Roosevelt and Fowler, and their Associates had been incorporated into Atlanta, Birmingham and Coast Railroad Company on the 22nd day of November, 1926, and the Interstate Commission on December 21, 1926, had issued its order (117 I. C. C. 439) allowing the transfer of the property to the New Company and providing that for

> "the purposes of the accounting, as provided in classification of investment in road and equipment in the text of Account 41 'Cost of Road Purchased,' the cash value of the preferred stock issued must, in stating the transactions in the accounts, be reckoned on a basis not in excess of its par value; and that the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor." (117 I. C. C. 443).

The reason why the Commission prescribed the use of its Accounting Rule 41 was that this property had been sold to Atlanta, Birmingham and Coast Railroad Company in consideration of that Company's preferred and common stock and the persons who received those shares of preferred and common stock for this property were those who had purchased the property at the foreclosure sale.

The transaction here involved was completed when the New Company—Atlanta, Birmingham and Coast Railroad Company—acquired this property from Roosevelt and Fowler who had purchased it at foreclosure sale, and paid to them for it, its shares of common and preferred stock. This is discussed cogently by the District Court in its second opinion on this subject matter in the case of *Atlanta, Birmingham and Coast Railroad Company*, 37 Fed. (2d) 401 at 402 as follows:

> "The concluding words 'Provided, however, and authority to issue said stock is granted upon the express

condition that . . . the cash value of the common stock issued must be reckoned on a basis not in excess of the amount received therefor,' can mean only the amount received by the Coast Company for its stock, and not what was paid by the Coast Line Company to the bondholders' Committee for it. *The Coast Company received, and was, under the reorganization plan, to receive not a dime of money, but only a deed to the railroads. So far as it was concerned it paid no cash for the deed, but only its stock.* The Commission's accounting regulation No. 41, referred to expressly in the order of December 21st, 1926, requires 'where the consideration given for the property purchased is other than cash, such consideration shall be valued on a current cash basis.'

"The stock which constituted the consideration for the roads must, therefore, be valued on a cash basis. Because it represented on January 1st, 1927, nothing except the railroads purchased, it can be valued only by valuing them. So that the requirement of the regulation and of the condition in the order come practically to the same thing, each necessitating a valuation of the railroads as of January 1st, 1927. Notwithstanding the close connection between the Coast Line Company and the new Coast Company, they are separate corporations. The New Company is but beginning its career. Its stockholders may change and creditors having separate interests may arise. Separate corporate organization can sometimes be disregarded in order to defeat fraud or reach the true rights of stockholders and creditors, but the separate accounting of railroads under the Interstate Commerce Act presents no such case. This separately organized railroad enterprise is entitled to have its separate and independent accounts under the usual regulations, and this was plainly indicated by the order of December 21, 1926. *The entry here in question may hereafter constitute admissible evidence in fixing rates, recapture of profits, ascertainment*

of depreciation, assessment of ad valorem taxes and the like. The purchase of the railroads by the Coast Company with its stock was its own transaction. It was unaffected (save that the foreclosure sale was held up until the Coast Line Company should fully pay its assumptions to the bondholders' committee) whether those assumptions had turned out to be $3,677,500.00, as was first supposed, or $4,080,697.00 as turned out to be true, or $10,000,000.00 as might have happened. In any case the cash value of the railroads diminished by the undisputed value of the preferred stock represents the investment of the common stock under accounting regulations No. 41 and under the terms of the enabling order of December 21st, 1926. The cash payments by the Coast Line Company in acquiring the common stock from the bondholders' committee did not necessarily measure its value, nor did they make the purchase by the Coast Company of the railroads a cash transaction so as to put into operation the provisions of regulation No. 41 touching cash purchases.

"It is true that regulation seeks to have recorded the historical fact of the amount invested rather than the value of the investment. The necessary exception recognized in the regulation does exist when, as here, the purchasing company does not pay cash. The Coast Line Company's purchase of the stock has this much to do with it: It is a voluntary cash transaction occurring at the critical time and having a close relationship to the value of the railroads, inasmuch as it expresses their value as estimated by the bondholders' committee and the Coast Line Company. It is evidence, but not the exclusive nor conclusive evidence of the then actual cash value of the railroads." (F.R. 501-2).

By its decree, the Court adjudged:

"That the equities are with the complainant, and that the order of October 29th, 1929, of the Interstate Com-

merce Commission herein complained of, in so far as the same fixes the amount at which complainant is to return its capital stock and its investment in road and equipment, be set aside and that the persons interested in the enforcement of said order, and their officers and agents, are permanently enjoined from enforcing the same, and that the supplemental application of the complainant on which said order was entered by the Interstate Commerce Commission stand for further hearing before said commission."

The District Court in its opinion in the case at bar (*Atlanta, Birmingham and Coast Railroad Company v. United States,* not yet reported, see R. 339) stated that they were not dissatisfied with their former findings in this case made in the two preceding hearings, including those above quoted [the other hearing being *A. B. & C. Rd. Co. v. United States,* 28 Fed. (2d) 885] but that they found it unnecessary to reassert them. In other words, the District Court, in the case at bar, again found that the Atlanta, Birmingham and Coast Railroad Company had acquired the property involved and paid for it by issuing its preferred and common stock to Roosevelt and Fowler as representatives of the Reorganization Committee.

No appeal was taken from a similar finding by the District Court in its first review of this case [*A. B. & C. Rd. Co. v. United States,* 28 Fed. (2d) 885]; and no ruling was made by this Court on this finding in the appeal from the second case before the District Court [37 Fed. (2d) 401]. It is a final determination.

It is clear therefore that in order to solve the problem at hand we must find what was the value on January 1, 1927, of the property which was acquired by Atlanta, Birmingham and Coast Railroad Company on that date.

VALUE CLAIMED BY APPELLANT AND COMMISSION'S VALUATION.

Atlanta, Birmingham and Coast Railroad Company claims that this value should be $24,010,136.47. That figure is arrived at by taking the Commission's final single sum value as of June 30, 1914 (Valuation Docket 1, 75 I. C. C. 645), and adding thereto the net of additions and betterments less retirements plus certain physical changes made but not recorded at December 31, 1926 (See evidence of the Witness Bell, R. 205-6).

The Interstate Commerce Commission claims that the value of the property was then $9,428,713.76 and the Commission's order of July 9, 1934, requires appellant to set up its books as follows:

Assets:

Account 701—Road and Equipment	$6,729,896.03
Other assets	2,698,817.73
Total	$9,428,713.76

Liabilities:

Account 751—Capital stock account:	
Preferred stock	$5,180,300.00
Common stock	4,248,413.76
Total	$9,428,713.76.

Appellant had proposed to set up its accounts as follows (R. 274, 327, Exhibit 10):

Assets:	
Account 701—Road and Equipment	$24,010,135.47
Other assets	2,698,817.73
Total	$26,708,953.20
Liabilities:	
Account 751—Capital stock account;	
Preferred stock	$ 5,180,300.00
Common stock	21,528,653.20
Total	$26,708,953.20

EXAMINATION OF THE COMMISSION'S VALUATION.

The Commission's valuation of $9,428,713.76 is based upon the par value of the preferred stock ($5,180,300) plus the amount which the Atlantic Coast Line Railroad Company had spent to purchase the shares of common stock of the New Company from Roosevelt and Fowler, the purchasers, at the foreclosure sale as contemplated by the agreement of February 23, 1926; that is, in the purchase of certain outstanding prior obligations of Atlanta, Birmingham and Coast Railway Company and the assumption by it of certain obligations of the Railway Company which had priority but which were not then due and in the furnishing by it of cash to the Receiver

and to the Reorganization Committee to enable them to pay the prior items hereinbefore referred to—all of which items aggregated the sum of $4,248,413.76. This figure which the Commission claims should be set up as the cost of the common stock was increased in the *last report* of the Commission because it found that the Coast Line Company had paid more for the items than the amount set out in Exhibit A to the agreement of February 23, 1926.

The Commission in Making Its Valuation of A. B. & C. Railroad Co.'s Property Did Not Take Into Consideration All of the Elements Which Should Have Been Taken Into Consideration.

Accounting Rule No. 41 which has been hereinbefore quoted contemplates that property which is acquired for other than cash must be valued at that which it paid for it. To determine the cost of the stock of Atlanta, Birmingham and Coast Railroad Company which was exchanged for the railroad property, fully equipped and a going concern, the railroad property must be valued. The value of the property received is the cost or price of the stock. Atlanta, Birmingham and Coast Railroad Company, appellant, received for its shares of stock, common and preferred, all of the assets of the Atlanta, Birmingham and Atlantic Railway Company under orders of the Commission, accounting rules and determinations of the court below. The value of that stock is to be determined by the value of those properties which were purchased with the stock.

The Commission did not purport to comply with this plain and necessary rule.

One of the qualities which it eliminated from the property to be valued was its value for rate-making purposes. It drew quite a distinction between the value for rate-making purposes and the market or exchange value, saying in its report (201 I. C. C. 670, R. 59):

> "It is apparent from the qualification stated in connection with our determination of the value for rate-making purposes of the properties in question, that such valuation was in no sense an expression of market or exchange value."

At this point the Commission cites its Valuation Docket No. 1, Atlanta, Birmingham & Atlantic Rd. Co., et al, 75 I. C. C. 645, at 665, et seq., which states:

> "The value we are required to establish, therefore, is a value determined for the specific purposes of governmental regulation under the Interstate Commerce Act. That value must embrace all of the property used by the carrier for purposes of transportation, whether owned by it or leased from others, and must include any intangible value that inheres in the property because of its use.
>
> "We are not concerned with a value for purposes of sale or of condemnation, which in either case might well be something different from the value of the same property for the purposes of governmental regulation, for there is in contemplation in such cases the transfer of the ownership of property and of rights in property and in a case of condemnation the possible destruction of certain property rights, and there must be included the value of non-carrier property."

If there be a difference in the two values why should not the property here involved have the advantage of that differ-

ence? Beyond any shadow of doubt it is entitled to the quality of a rate-making value.

The above quotation indicates that one value may be greater than another. Why should the lesser of these two values be taken for this property? Has the element of valuation been given full force and effect, if it leaves out any quality? The valuation rules do not eliminate any quality of value.

In the case of *St. Louis & O'Fallon Rd. Company*, 279 U. S. 461, at 484 this Court held:

> "Paragraph 4, § 15a, directs that in determining values of railway property for purposes of recapture the Commission 'shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes.' This is an express command; and the carrier has clear right to demand compliance therewith."

The Court cites *United States, ex rel., Kansas City Southern Railway Co. v. Interstate Commerce Commission*, 252 U. S. 178.

The Court further holds:

> "The elements of value recognized by the law of the land for rate-making purposes have been pointed out many times by this Court," and cites
>
> *Smyth v. Ames*, 169 U. S. 466;
>
> *Willcox v. Consolidated Gas Co.*, 212 U. S. 19;
>
> *Minnesota Rate Cases*, 230 U. S. 352;

Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276;

Bluefield Water Works & Improvement Co. v. Public Service Commission, 262 U. S. 679;

McCardle v. Indianapolis Water Co., 272 U. S. 400.

The Commission in the case at bar has undertaken to give one and only one valuation to this property and that is the market or exchange value.

In its first report on this subject matter (117 I. C. C. 181) at 186-7 the Commission said:

> "There is no difficulty in reaching the conclusion that from the standpoint of transportation service the proposed reorganization and control by the Atlantic Coast Line is in the public interest. The sentiment in favor of the plan in the territory served by the A. B. & A. is apparently unanimous and earnest. Approval should therefore be given and the necessary authority issued, unless there be something in the terms and conditions of the proposed acquisition, or in the consideration, so inequitable as to require modification in the public interest. We find nothing of this character in the arrangement. It is true that there is wide disparity between the proposed price to be paid by the Atlantic Coast Line for its control of the property and the value of the property viewed as a basis for rate making, but our highest court has distinguished between value for rate-making purposes and exchange value."

Citing

Galveston Electric Company v. Galveston, 258 U. S. 388;

REPRODUCTION VALUE.

In ascertaining the value of this property in this case the Commission puts to one side reproduction value although in the *O'Fallon Railroad Case, supra,* at page 484 after referring to elements recognized by law for rate-making purposes says:

> "Among them is the present cost of construction or reproduction."

The Court then says:

> "Thirty years ago, *Smyth v. Ames* announces (546):
>
> 'We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probably earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

The witness Willoughby, who was Chief Engineer of this property, at page 174 testified:

> "I have not made any investigation relative to what would be proper unit prices to apply to the Atlanta, Bir-

mingham and Coast but I have made an investigation as to what would be proper unit prices to apply to the Atlantic Coast Line Railroad in Georgia and Alabama in bringing the value of that road up to date as of December 31, 1927. Those figures are what we called the 1925 price level, assuming the same practice which the Bureau followed in determining the 1914 price level. Regarding what would have been the cost of reproducing the property of the Atlanta, Birmingham and Coast as of January 1, 1927, assuming those figures are proper to be applied —the studies on the Atlantic Coast Line Railroad for the States of Georgia and Alabama determined that the ratio of the 1925 price level to the 1914 price level would be 1.85 for the items in the engineering report and would be 1.59 for items in the land report. If we applied the same ratio to the report rendered by the Commission on the Atlanta, Birmingham & Atlantic as of June 30, 1914, the reproduction cost new of the Atlanta, Birmingham and Coast on January 1, 1927, would be for items in the engineering report $32,341,195, and for items in the land report $1,988,365, a total of $34,329,560. That does not include the lands in non-carrier service. That includes the property which the Commission reported to the Atlanta, Birmingham & Atlantic Railroad and not the property, as I understand it, of the terminal company in Atlanta, the Alabama Terminal and the Georgia Terminal. It is exclusive of those. I mean one at Birmingham and one at Atlanta. There would have been a cost of reproduction new for equipment of $8,608,168, for general expenditures $4,211,751, for telegraph lines $158,388, a total of $12,978,307. In determining the value, that is, the reproductive value of the equipment as given above, I used the sums of money that were reported as the 1914 value in the I. C. C. report on the Atlanta, Birmingham & Atlantic and multiplied Account 51 by two, Account 53 by 1.78, Account 54 by 1.69, Account 57 by 1.91, and for the telegraph line by

1.50. These factors were those that were introduced by the Bureau of Valuation in the Richmond, Fredericksburg & Potomac recapture proceeding, Finance Docket No. 3898.

"For the general expenditures I used the same percentages that the Bureau of Valuation used in the 1914 value; that is, reproduction value, of the Atlanta, Birmingham & Atlantic. According to my investigation there would have been a total of some $47,307,867 required to reproduce the properties which were covered in the valuation of the Atlanta, Birmingham & Atlantic Railway Company made by the Commission as of 1914, exclusive of the terminals referred to in that report; not including those items that have been added to the Atlanta, Birmingham & Atlantic since the valuation date under the Commission's Valuation Order 3." (R. 174-175).

It will be noted that Mr. Willoughby's evidence did not include those items which had been added to the property of the A. B. & A. Railway Company since the valuation date of the Commission's Valuation Order No. 3 and his report was exclusive of the terminals referred to in the Commission's report (R. 75).

At the subsequent pages of his testimony Mr. Willoughby gives additional details as to the manner in which he made his estimate. He testified at R. 182 as follows:

"I think if the Atlanta, Birmingham and Coast were not existent it ought to be reproduced substantially as it is and as an engineer I am tinctured with the idea that the value of a property is its reproduction cost."

He adds further that if the property were reproduced the Atlantic Coast Line ought to own it (R. 182). These statements are repeated at R. 183. He further states (R. 183):

"I would say that the property is worth more for every purpose to which a railway can be put."

He means by that that the property was on January 1, 1927, worth more than it was on January 1, 1914.

The Atlanta, Birmingham and Coast Railroad Company is seeking to use a valuation in the opening entries on its books of account a sum very much less than what would have been the cost of the property if it had been constructed as of January 1, 1927, which cost, as stated, would have been $47,307,867.

See also Colonel Bugg's testimony as to reproduction cost (R. 234 et seq.), discussed at p. 65 of this brief; and the witness Edwards' testimony on the same subject (R. 225), discussed at page 57 of this brief.

Valuation Under Section 19a of the Act to Regulate Commerce.

It is provided under subsection 5(i) of Section 19a of the Act to Regulate Commerce that:

> "All final valuations by the Commission and the classification thereof shall be published and shall be *prima facie* evidence of the value of the property in all proceedings under the Act to Regulate Commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as 'the Act to Regulate Commerce,' and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

The District Court in *Atlanta, Birmingham and Coast Railroad Company v. United States*, 37 Fed. (2d) 401, at 403 said:

> "The Commission's valuation of railroads is expressly made *prima facie* proof in all proceedings under the Commerce Act. This is such a proceeding. It follows that the Commission's conclusion that this valuation was 'neither pertinent nor material evidence in the determination of investment' was erroneous in this case, where the investment was not of cash, but must be determined by the ascertainment of value."

The District Court then determined that the valuation of this property had been unlawfully arrived at by the Commission because it had refused to give that prima facie force and effect to the valuation made under Section 19a which the law required.

Under the provisions of Section 19a of the Act to Regulate Commerce, the Commission is required to do many things in ascertaining the value of railroad property, including making of inventories, the classifying of the physical property; the ascertaining and reporting in detail as to each piece of property, other than land, owned or used by common carriers for its purposes as a common carrier; the original cost to date; the cost of reproduction new; the cost of reproduction less depreciation; and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission is required to make an investigation and report in detail and separately from improvements the original cost of all lands, rights of way and terminals owned or used for the purposes of a common carrier.

In its final report (Valuation Docket No. 1, 75 I. C. C. 645) the Commission said:

"The final single sum value which we have ascertained for the property of the carrier is based upon a careful consideration of all the relevant facts that have come to our attention. It is in our judgment a value which we are authorized by the Valuation Act to ascertain and report, and we have ascertained and now report it as the final value of the property of this carrier for rate-making purposes. It is the fair value of the property which the carrier holds for and uses in the service of transportation and upon which it is entitled to earn a fair return." (75 I. C. C. at 666).

The Atlanta, Birmingham & Atlantic Railway Company thought this valuation was too small and contested it.

The amount of investment in road and equipment reported as of December 31, 1916, was as follows:

Atlanta, Birmingham & Atlantic Rd. Co.	$52,197,059.97
Georgia Terminal Company.....	4,831,113.06
Alabama Terminal Railroad Company.	5,791,226.98
Or a total equipment in road and equipment of	$62,819,400.01.

(See R. 191)

The Atlanta, Birmingham and Atlantic Railroad Company set up on its books as of January 1, 1916, this account at $38,760,149.87, this being a reduction of $24,059,250.14. (R. 191).

The Atlanta, Birmingham and Coast Railroad Company desires to set up this account (No. 701—Investment in road and equipment) at $24,010,135.47, notwithstanding the fact there has been added more than $1,000,000.00 to the property since the title passed to the Atlanta, Birmingham & Atlantic

Railway Company in 1916. That means that appellant is undertaking to set up Account No. 701 at approximately $40,000,000.00 less than the recorded cost (R. 191). The figures at which this account had been stated were shown in the annual reports of the carriers to the Interstate Commerce Commission and had been constantly received by the Commission over many years.

The Atlanta, Birmingham & Atlantic Railway Company, then in the hands of a Receiver, as of December 31, 1926, reported to the Commission this Account No. 701 at $38,596,400.62. That report covered the same property which as of the next day—January 1, 1927—Atlanta, Birmingham and Coast Railroad Company desires to set up at $24,010,135.47, or about $14,000,000.00 less than the figures at which it had been returned by the Atlanta, Birmingham & Atlantic Railway Company and its Receiver for a great many years. In the light of these circumstances it would seem that the valuation proposed by the Coast Company for its Account 701 is exceedingly modest.

These entries and reports have evidentiary value. See *Southwestern Bell Tel. Co. v. City of San Antonio, Texas*, (C. C. A. 5th Circuit) 75 Fed. (2d) 880.

Changes in Conditions as of January 1, 1927, Did Not Have the Effect of Overcoming the Prima Facie Effect of the Commission's Valuation as of June 30, 1914, of this Property.

In Reorganization and Control of Atlanta, Birmingham and Atlantic Railway Company, 158 I. C. C. 6, decided November

9, 1929, the Commission took the position that its findings of value as reported in 75 I. C. C. 645 and which related to June 30, 1914, had no evidential value whatever in this case. In a review of the Commission's report and order of November 9, 1929, the District Court [*Atlanta, Birmingham and Coast Railroad Company v. United States*, 37 Fed. (2d) 401] disapproved that position.

In the case at bar the Commission found that its valuation report of June 30, 1914 (Made on July 20, 1923, 75 I. C. C. 645) had prima facie effect (R. 59-60) but it held that this prima facie effect had been overcome and made a greatly different valuation of this property in its report now under consideration.

This makes it appropriate for us to investigate some of the elements which went into the valuation of this property as of January 1, 1927, as compared with those same elements as of June 30, 1914.

Colonel Bugg, President of Atlanta, Birmingham and Coast Railroad Company, and who has been connected with this same property for more than twenty years, at record 234 compares gross revenues and railway operating income of this property in 1914 with those in 1925 and 1926, as follows: In 1925, freight revenue $4,649,625; in 1914 it was $2,081,554, in increase of $2,568,071 or 123.4 per cent. Passenger revenue in 1926 was $518,168; in 1914 it was $599,656, a decrease of $81,488, or 13.6 per cent. The gross revenue in 1926 was $5,726,345; in 1914 it was $2,945,103, in increase of $2,781,242 or 94.4 per cent. The Railway Operating Income, that is net after taxes, in 1926 was $345,061 and in 1914 it was $253,520, in increase of $91,496 or 36.1 per cent. (R. 234).

The same witness also made a statement of the population of Georgia and Alabama counties served by the Atlanta, Birmingham and Coast Railroad Company as shown in the United States Census reports as follows:

In Georgia the population of these counties in 1930 was 726,556; in 1910 it was 545,961, an increase of 180,595 or 33.1 per cent. (R. 234).

In Alabama the population of these counties in 1930 was 588,252, and in 1910 it was 373,067, in increase of 215,185 or 57.7 per cent. The total population of the counties in Georgia and Alabama in 1930 was 1,314,808; in 1910 it was 919,028, in increase of 395,780, or 43 per cent. (R. 234).

He then gives a statement of the assessed values of real estate in Georgia and Alabama in 1914 as compared with those in 1926, as follows:

The assessed value of real estate in Georgia for the year 1914 was $514,917,710 and in the year 1926 it was $734,178,493; in Georgia for the year 1914 the assessed value was $387,709,124 and in the year 1926 it was $699,438,884. (R. 234).

The witness Bugg then adds:

> "I should say that, with the increase in population and with the increase of property values, railroad property would likewise increase in value." (R. 235).

In summing up his evidence as to the increase in values Colonel Bugg states:

> "The gross operating revenue of this property had increased in 1926 as compared with 1914 by 94.4 per cent. The population of the counties through which the road

runs in Georgia and Alabama had increased 43 per cent. The Florida traffic in citrus fruits and vegetables, and all those things which we call perishable, as well as the inbound movement into Florida, had increased. *I find all of the elements which make the value of a railroad property for any purpose, had greatly increased in* 1927 *or* 1926 *over* 1914, *and my opinion is, and my answer is, that for all purposes for which a railroad may be valued, the property now owned by the Atlanta, Birmingham and Coast Railroad Company was more valuable on January* 1, 1927, *than it was on January* 30, 1914." (R. 234-5).

See also testimony of the witness Willoughby at R. 174-5, 183, discussed at page 46 of this brief.

Further Evidence as to the Value of this Property on January 1, 1927.

The witness J. Lee Edwards, Vice-President of Atlanta, Birmingham and Coast Railroad Company, testified (R. 216, et seq.) that there was a large increase in industries in the territory served by the Atlanta, Birmingham and Coast Railroad Company between June 30, 1914, and January 1, 1927. He gave particulars fully sustaining that statement. For instance, on June 30, 1914, the only industries reached by the Atlanta, Birmingham & Coast tracks at Atlanta were two wholesale grocery companies, one newspaper storage warehouse, a temporary storage yard for storage of iron and steel structural material, and a small warehouse for storage of calcium carbide. Those industries produced about 200 cars of freight per year, on which there was estimated revenue of $10,000.00. (R. 217).

On January 1, 1927, there were twenty-eight industries reached by the Atlanta, Birmingham and Coast tracks at Atlanta producing 3,602 cars of freight, on which the estimated revenue was $275,320.00. (R. 217).

At Birmingham on June 30, 1914, the only industries served by the Coast Company's tracks were a lumber yard and local ice plant, these two producing annually about 100 cars of freight, with estimated revenue therefrom of $5,000.00. On January 1, 1927, there were at Birmingham sixteen industries served by the tracks of the Coast Company, producing about 2,854 cars per year, with a revenue of $93,825.00 (R. 217).

In 1914 this property was receiving from its Florida business approximately $261,859.00; and in 1926 that revenue had increased to $1,170,132.00, an increase of $908,273.00 (R. 177). The population of Florida in 1910 was 752,619, while in 1930 it was 1,468,211, or an increase of 95 per cent. between the two census dates.

The value of products manufactured in Florida in 1914 was $81,112,000.00; in 1925 it was $267,009,000.00, an increase of 229 per cent.

The carload movement by rail, via all lines, of fruits and vegetables from the State of Florida for the season 1914-1915 was 40,563 cars, while for the season 1923-1924 it had grown to 105,483 cars; in 1924-1925 it was 95,110 cars, and in 1925-1926 it was 76,070 cars.

The average for the first five years, including 1914 was 42,079 carloads, while for the last five years, including 1926, it was 85,870 carloads, or an increase of 104 per cent.

At page 225 of the Record, Mr. Edwards testified in substance that the market or exchange value of the Atlanta, Birmingham & Coast Railroad Company on December 31, 1926, or January 1, 1927, was in excess of the amount which it is seeking to set upon its books as the value of the property.

At this point he testified in substance that the Atlantic Coast Line Railroad Company would have been justified in expending "the usual cost of such a railroad; I suppose it would have been about $40,000,000.00" to have reproduced it.

At page 226 he testified that the Atlantic Coast Line would have been justified in expending $40,000,000.00 to produce a line between Waycross and Birmingham, and Atlanta and Thomasville, and in basing that opinion he says:

> "By reason of the fact that there was a very patent gap of their railroad system between Florida, where such a large fraction of their tonnage was produced or consumed, and those important lines which came down to Atlanta and to some extent to Birmingham."

We have seen that in its order of valuation—Valuation Docket No. 1—the Commission stated:

> "It is the fair value of the property which the carrier holds for and uses in the service of transportation and upon which it is entitled to earn a fair return." (75 I. C. C. 645, 666).

There is no doubt about the carrier being entitled to earn a fair return upon the valuation of its road and equipment.

We have also seen that under the Act to Regulate Commerce "All final valuations by the Commission . . . shall be *prima facie* evidence of the value of the property in all

proceedings under the Act to Regulate Commerce as of the date of the fixing thereof."

This is made to apply to all judicial proceedings for the enforcement of the Act and in all proceedings brought to enjoin, set aside, annul, or suspend in whole or in part, any order of the Interstate Commerce Commission.

We have seen that the court has held that the proceeding now at hand and the judicial proceeding then at hand are proceedings under the Act to Regulate Commerce within the meaning of Section 19a, 5(i) of the Act.

We accept the assurance of the Commission that its report in Valuation Docket No. 1 was "based upon a careful consideration of all the relevant facts," etc. We also accept the further statement that the valuation "is the fair value of the property," etc.; notwithstanding the statements made by Mr. Willoughby and Colonel Bugg that the valuation was too low.

We assert with confidence that a valuation of this property on January 1, 1927, would have been in excess of the valuation of it on June 30, 1914. This assertion is based on the following facts:

1. Common knowledge of the change in conditions during that period;
2. Increase in the population in the territory covered by Atlanta, Birmingham & Coast Railroad Company;
3. Increase in gross revenue to the extent of 94.4 per cent;
4. Increase in railway operating income to extent of 36.1 per cent;

5. Increase in assessed values of properties in Alabama and Georgia, in which States the property of this Company lies;

6. The great increase in the strategic value of this property in its relation to the Atlantic Coast Line Railroad Company and its allied lines;

7. The tremendous increase in the traffic of Atlantic Coast Line Railroad Company and its allied lines which gross revenue from that traffic had become for the year 1926 $308,000,000.00. (R. 268).

It cannot be claimed that the valuation of $24,010,135.47 represents the cost of the property. It is practically $40,000,000.00 less than the cost of those properties reported to the Commission year in and year out for a good many years. It is only about one-half of the reproduction cost in 1927.

We respectfully submit that the *prima facie* effect which the law gives to the Commission's findings on valuation should be made conclusive as to the valuation of this property on January 1, 1927, for that the valuation as of June 30, 1914, had been fairly found after diligent effort and circumstances which made for value as of January 1, 1927, as compared with June 30, 1914, were such as greatly to increase the 1927 valuation. The ratio, as we have seen from the evidence, to be applied on January 1, 1927, to the elements which were valued on June 30, 1914, should be 1.85, which makes about $40,000,000.00, and of that $40,000,000.00 the Atlanta, Birmingham & Coast Railroad Company seeks to use for this purpose only about $24,000,000.00. That is, it seeks to write off all of the increased percentage in the valuation of the units. Instead of using 1.85 in its application to the units it seeks to use only the figure 1. That is, to multiply the values

of 1914 by 1 instead of by 1.85 (of course, adding thereto the net of additions, betterments and abandonments).

HISTORY AND EARNINGS.

The next subject for consideration is the history and earnings of the property acquired by the Atlanta, Birmingham & Coast Railroad Company.

The Atlanta, Birmingham & Atlantic Railway Company was organized for the purpose of establishing a line of railroad from Brunswick, Georgia, to Atlanta, Georgia, and Birmingham, Alabama, and to establish a line of steamers from Brunswick to New York and Boston (75 I. C. C. 645). The property south of Montezuma, Georgia, was made up of several small roads which were linked up piece by piece, and additions were made thereto. Colonel Bugg described this at Record page 241, et seq. The description of the properties has been given in the Record and also in Valuation Docket No. 1, 75 I. C. C. 645. Colonel Bugg gave a schedule of the earnings as follows:

1907—Net Operating Revenue.....	$416,697.00
1908— " " "	426,662.00
(A year of financial stringency)	
1909—Net Operating Revenue.....	357,026.00
1910— " " "	579,389.00
1911— " " "	662,592.00
1912— " " "	676,825.00
1913— " " "	566,301.00
1914— " " "	632,406.00
(The World War began in August, 1914)	

1915—Net Operating Revenue..... 282,371.00

1916—(Year ending June 30) Net Operating Revenue 597,527.00

1916—(Year ending December 31) Net Operating Revenue..... 784,658.00

1917—Net Operating Revenue..... 661,111.00

1918—*Deficit* 335,074.00
(Taken over by Government Jan. 1, 1918)

1919—World War, Government Operation *Deficit* 780,080.00

1920—Two Months' Federal Administration, Six Months' Federal Guarantee, Four Months' Corporate Operation .....*Deficit*—1,096,228.00

1921—Corporate Operation under conditions established by Federal Operation .....*Deficit*—1,579,450.00

1922—Receiver's Operation....*Deficit*— 213,905.00

1923—Net Operating Revenue..... 70,048.00

1924— " " " 421,371.00

1925— " " " 420,022.00

1926— " " " 520,438.00

(See Record, pages 252, 253.)

At Record, page 253, the witness Bugg said:

"Those figures are illuminating, in that they indicate that in each case following a financial stringency or an outbreak of war, or the results of the operation of the Railroad Administration, that the road recovered its

earning power and continued to show improvement until some of these tragic events hit it again."

There was a strike which was extensive and devastating to this property during the year 1921 (R. 231).

The apex of the earnings of the property up to January 1, 1927, was the year 1926 (R. 230). The strike above referred to cost more than the net deficit which had accrued to this property from the beginning.

The year of the purchase of this property by the Atlantic Coast Line the net operating income was $520,438, as above referred to.

The earnings of this property were "sharply upward" (117 I. C. C. 189). This had been the trend for two years.

This property did not have sufficient local traffic to support it. It was, and is, a "bridge line." The connection of this property with Atlantic Coast Line and its affiliated roads supplied the deficiency which existed in it. That is, it made a use for it. In addition to that it gave to the Atlantic Coast Line and its system a solidarity which was so essential to it as to be called by his Commission the first step in its re-creation. After the Atlantic Coast Line acquired the common stock of the Atlanta, Birmingham & Coast Company, it was no longer at the mercy of its competitors nor dependent upon any other line for the completion of its transportation system between Florida and the west and between the west and Florida.

STRATEGIC VALUE.

The Interstate Commerce Commission, in Docket 12964, Consolidation of Railroads, 63 I. C. C. 455, at page 543,

states: *"Despite its history, a very considerable value attaches to the A. B. & C. Railway. This arises from its relation to the largest systems round about, namely the A. C. L. and the L. & N."*

This property was there grouped with the Atlantic Coast Line—Louisville & Nashville System. It was retained in that group in the Commission's final plan of consolidation (159 I. C. C. 522, 524).

The witness Edwards identified two maps (R. 218). These are Exhibits Nos. 11 and 12. Exhibit No. 11 shows the lines of the Atlantic Coast Line System, including therein lines in which the Atlantic Coast Line or any one of its subsidiaries control as much as one-half of the voting stock. These lines begin on the north at Chicago and include, besides, such places as St. Louis, Evansville, Louisville, Indianapolis and Cincinnati, and on the northwest Memphis, Knoxville and Nashville. On the northeast the lines begin at Richmond and Norfolk, follow the Atlantic Coast and ramify through the State of Florida. The Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway get to Atlanta from the northwest. From Atlanta the Georgia Railroad, which is operated by the Atlantic Coast Line and the Louisville & Nashville as lessees, goes to Augusta, Macon and Athens.

The Atlantic Coast Line's system had no lines in Georgia between Atlanta and Waycross, nor had that system any line between Atlanta and Birmingham. Waycross is about forty miles north of the Georgia-Florida line. (It has a line as far north as Albany, Georgia, which is about two hundred miles from Atlanta. That line in connection with the Central of Georgia was on January 1, 1927, used by the Atlantic Coast

Line for all of its passenger service and much of its freight from Florida to Atlanta and beyond, and is now so used.) This line is controlled by the Illinois Central.

Exhibit No. 12 shows how the lines of the Atlanta, Birmingham & Coast Railroad Company bridge the gap between Waycross and Atlanta, giving to the system complete connection and bringing the two great wings of the Coast Line's system together.

In the first report on Consolidation, 63 I. C. C. at 543, the Commission, in speaking of the Louisville & Nashville and Atlantic Coast Line Railroads, said:

> "At one point, however, it is markedly weak, due probably, to the independent development of its two great wings, eastern and western. This defect is the lack of connection affording through routes between north and south across the whole of middle Georgia between Atlanta and Waycross. *The first point concerning its re-creation is the bridging of this gap.*" (Italics added.)

That report is dated September 12, 1921. The tentative plan adopts as an appendix the report of the Commission by Dr. William C. Ripley. Thus, the Commission has itself placed the bridging of the gap between the two great wings of this system as the first step in its re-creating. We will see that the Commission's statement that the bridging of this gap is essential to the "re-creation of this system" is correct.

The system contains about 14,500 miles. In Florida the Atlantic Coast Line has 2,100 miles, in Georgia about 700. The lines in Florida develop traffic of a highly perishable nature, consisting of vegetables, citrus fruits and things of that sort, which require rapid movement. The points on the

northwest border of this system, to-wit: St. Louis, Evansville, Louisville, Cincinnati and Chicago, are gateways to a very great and profitable part of the country.

In 1926 the gross revenues from this system were $308,000,000 (R. 268). Let us bear in mind that the undisputed evidence as to the cost of reproduction of the property of the Atlanta, Birmingham & Coast in 1927 is that the cost would have been about $47,000,000.

The witness Edwards testified (R. 225) as follows:

> "I have shown by another map that the Atlanta, Birmingham & Atlantic bridged the gap exactly." (He means Exhibit No. 12.) "It became, or was capable of becoming, the link connecting these two parts of the Atlantic Coast Line System. I have shown that the Atlanta, Birmingham & Atlantic was a line between important traffic territories, traffic producing territory and traffic consuming territory, considerably shorter than the existing lines of the Atlantic Coast Line. I agree with the testimony of Mr. Willoughby that if the Atlanta, Birmingham & Atlantic had not been built, in my opinion the Atlantic Coast Line should have built a road substantially located geographically where the Atlanta, Birmingham & Atlantic is located."

At page 229 the witness testified as follows:

> "Q. Examiner Walton: Do you want to be understood in saying that the Atlantic Coast Line would have been justified in spending as much as $40,000,000 on January 1, 1927, in order to effect the saving of mileage from Waycross to Atlanta and Thomasville to Montgomery, mentioned in your direct testimony?"
>
> "A. No, that is only a part of it, Mr. Examiner, my opinion—and only my opinion, of course—is that this

was a great big system of railroads, one of the largest in the United States, taking all of it together. One of its principal fields for producing traffic is in the State of Florida. A large part of that traffic moves to and from the west, meaning the Ohio River territory. This system, as I have explained, had a gap between the Florida line, almost, Waycross, and Atlanta. For the protection of their future, for the service, it is my opinion that they were justified in spending as much as $40,000,000 to build the railroad to take care of that hiatus."

"Q. Examiner Walton: How would you have expected the Atlantic Coast Line to get an adequate return on $40,000,000 of expenditure?"

"A. Mr. Examiner, the total traffic involved was very large. Of course, I do not know just how much there is between Florida and the West, but the total earnings of this system ran around $300,000,000 a year and for the consolidation of two of the principal parts of the system it seems to me only a small sum of money to spend $40,000,000 as a matter of protection as well as a matter of revenue (R. 229).

The witness Bugg testified that the gross revenue of this system for 1926 was $308,000,000 (R. 268).

At page 185 Mr. Willoughby expresses his agreement with the Commission as to the value of this property growing out of its relation to the Atlantic Coast Line and the Louisville & Nashville.

Mr. Willoughby also expresses his agreement with the Commission (R. 185, 186), stated in its report of October 26, 1926, 117 I. C. C. 181 and 186, a part of which quotation is as follows:

"It has long been recognized the lines of the A. B. & A. would be of particular value to the system of the Atlantic Coast Line in affording north and south connections between the lines of that system and those of its affiliated companies."

He further testified the lines there referred to are those now owned by the Atlanta, Birmingham & Coast. At page 186, et seq. he gives some description of the physical relation between this property and the properties of the Atlantic Coast Line Railroad Company and the Louisville & Nashville. It connects with the Louisville & Nashville Railroad at Birmingham and at Atlanta, operating into the same passenger station at Birmingham. It touches the Louisville & Nashville at Pelham, which is some twenty miles from Birmingham. It touches the Nashville, Chattanooga & St. Louis at Atlanta. This latter company is controlled by the Louisville & Nashville. It touches the Atlantic Coast Line at Brunswick, Offerman, Waycross and Tifton, Georgia. The Atlantic Coast Line has about 5,200 miles, the Nashville, Chattanooga & St. Louis about 800 miles, the Louisville & Nashville about 5,200 miles, the Georgia main line 175 miles; that road proceeds to Athens and other places in Georgia. The Atlanta & West Point and the Western Railway of Alabama have about 170 miles. Other roads, such as the Charleston & Western Carolina, with 350 miles, are in the system. At page 187 he testified:

"Q. State whether or not in your judgment, from the economic side of your engineering profession, those facts give to this property an important value because of its affiliation with those other properties mentioned."

"A. I think so."

Colonel Bugg gives testimony on this subject, beginning at R. 238. He testifies that the location of the Atlanta, Birmingham & Coast Company's property adds a great deal to its value, saying that the Interstate Commerce Commission so expressed itself in 63 I. C. C. He concurs in that opinion. He shows the relation between the Atlantic Coast Line and the Louisville & Nashville, and shows the points of contact between this property and the lines of the Louisville & Nashville and the Atlantic Coast Line, and that it makes a very direct connection with Florida traffic, saying "traffic brought up from Florida over the Atlantic Coast Line is delivered to the Atlanta, Birmingham & Coast at Waycross (or Offerman) and can be handled to Atlanta, where the Atlanta, Birmingham & Coast connects with the Louisville & Nashville and the Nashville, Chattanooga & St. Louis. The Atlanta, Birmingham & Coast can also handle such traffic to Birmingham, Alabama (R. 239). He shows the relation between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, that is, that the Louisville & Nashville owns the controlling stock of the Nashville, Chattanooga & St. Louis. He testifies that the relation of the Atlanta, Birmingham & Coast properties to the Atlantic Coast Line, Louisville & Nashville, and Nashville, Chattanooga & St. Louis "contributes very greatly to its value" (R. 239), and adds, "It is in the power of the Atlantic Coast Line Railroad Company to give to the Atlanta, Birmingham & Coast Railway a great deal of unrouted and western bound traffic which the Atlantic Coast Line originates in Florida and South Georgia, and to influence shippers to so route even a greater proportion. The Atlantic Coast Line has about 2,100 miles in Florida and handles more of the perishable traffic out of Florida than perhaps any other line. In

addition to that which it originates, the Atlantic Coast Line receives a great deal of traffic brought into Jacksonville by the Florida East Coast. The Florida East Coast now has about 900 miles of line, going down to the very tip of the peninsula and Key West."

> "At Atlanta the Atlanta, Birmingham & Coast touches both the Louisville & Nashville and the Nashville, Chattanooga & St. Louis, both of which serve the west. It can be fed at its northern termini, Waycross, Offerman, Brunswick and Tifton, by the Atlantic Coast Line. Just as it can be fed by those roads at those points of interchange it can be used as an instrument for the transfer of traffic to them" (R. 240).

He testifies that this makes the Atlanta, Birmingham & Coast property a bridge line and gives to it "a great deal of value."

At R. 240 he states that he heartily agrees with Mr. Willoughby's testimony that the property, if not in existence, should be built, reserving the right to differently locate at certain parts of the line.

At R. 267 Colonel Bugg testified as follows:

> "Q. Please state if there was a special value in this property to the Atlantic Coast Line System at January 1, 1927, and, if so, describe that."
>
> "A. It had two kinds of value to that system in 1927. The year 1926 was a year of the heaviest railroad gross earnings known in the southeastern part of the country, and probably in any other part of the United States. Possession of this property by the Atlantic Coast Line could contribute to the holdings on the lines of the Atlantic Coast Line and its affiliated lines very valuable traffic connections long in existence. If those traffic connections were broken for any cause, the Atlantic Coast

Line, after the purchase, had the Atlanta, Birmingham & Coast Railroad to fill in those broken connections for its traffic out of and into Florida, both freight and passenger.

"The Atlantic Coast Line had then and has now about 2,100 miles of line in Florida and works in close co-operation with the Florida East Coast Railway, which has about 900 miles of line in that State. If the Atlantic Coast Line should be without the control of the Atlanta, Birmingham & Coast, the great volume of the traffic out of that territory toward the west, then handled by the Atlantic Coast Line, would have been at the mercy of circumstances beyond its control. That should have been cured as quickly as possible. The control of the Atlanta, Birmingham & Coast does effectively cure it."

"Q. What was the gross revenue of the Atlantic Coast Line Railroad and the combined gross revenue of the Atlantic Coast Line System, including the Atlantic Coast Line property in 1926?"

"A. The gross revenue of the Atlantic Coast Line Railroad was about $96,000,000, and of the combined Atlantic Coast Line properties about $308,000,000."

"Q. Was it in the power of the Atlantic Coast Line Railroad and its affiliates to control or influence valuable traffic to the Atlanta, Birmingham & Coast on January 1, 1927?"

"A. Yes, sir, in my opinion, they could have controlled or influenced to the Atlanta, Birmingham & Coast traffic sufficient to have made the net income of the Atlanta, Birmingham & Coast 5¾ per cent. on more than the valuation now sought."

"Q. Colonel Bugg, on yesterday the Examiner, as I recollect, asked you in substance if there had been any change in the interchange of traffic between the Atlantic

Coast Line and the Atlanta, Birmingham & Coast, and I do not remember your answer. Will you please say?"

"A. The question, as I recall it, related to the change in volume or proportion, and my answer was that while there had been a change in volume, due to a general decrease of business, that I did not think there had been any material change in the proposition."

"Q. Why, in your judgment, has that been so, that there has been no increase in traffic to the Atlanta, Birmingham & Coast?"

"A. *Because, in my opinion, traffic relations of greater value have been preserved to the Atlantic Coast Line Railroad and its affiliated roads by the course pursued.*" (R. 268).

There is not a scintilla of evidence in this Record contrary to the testimony of Mr. Willoughby, Mr. Edwards, or Colonel Bugg on the strategic importance of this property. On the other hand, there is confirmation thereof by the Commission, as expressed in the two instances quoted and also in the tentative and final grouping of railroads for purposes of consolidation.

Further, as is elsewhere pointed out in this brief, the only witness offered by the Commission definitely confirms the strategic value of the Atlanta, Birmingham & Coast Company's properties to the Atlantic Coast Line's system. As we will show in the discussion of Mr. Boles' testimony, he states that the possession of the control of the Atlanta, Birmingham & Coast's properties by Atlantic Coast Line may very well save to the Atlantic Coast Line a large sum of money by preserving to it traffic then moving over its lines.

Colonel Bugg's testimony is to the effect that the Atlantic Coast Line Railroad Company can divert to the Atlanta, Birmingham & Coast Railroad Company enough traffic to make the net return on that road 5¾ per cent. on more than the valuation which the Atlanta, Birmingham & Coast Company desires to set up in this proceeding as the value of its investment in road and equipment. This element of valuation the Commission's witness Boles entirely eliminates in his estimate.

We respectfully submit that the Atlanta, Birmingham & Coast Railroad Company is modestly within its rights in undertaking to set up on its books the value of its road and equipment at $24,010,135.47, only about one-half of its cost of reproduction, which is the value affirmed to it by this Commission in Valuation Docket No. 1, adjusted to additions, betterments and abandonments, and that when the strategic value of this property to the roads controlled by the Atlantic Coast Line is taken into consideration to the extent and in the manner affirmed by the Commission, which makes it the first step to the "re-creation" of that system, the value claimed by the Atlantic Coast Line is modest to the last degree.

EVIDENCE OF MR. C. E. BOLES.

The Commission introduced one witness, Mr. C. E. Boles (R. 276). He is a member of the Bar and is in the employ of the Commission, with the Bureau of Finance. Since September 1, 1926, he has been in charge of the Securities Section of the Bureau of Finance, having immediate supervision of the work of examiners who handle applications by carriers for authority to issue securities (R. 277). He has never seen the properties of the Atlanta, Birmingham & Coast Railroad

Company (R. 300). He "did not consider any of the value of any of the physical properties of the carrier, that is, separately and apart and as separate items" (R. 300, et seq.). He considered only the Commission's valuation of the properties as stated in its final valuation. He gave no consideration to the great increase in values in 1927 over 1914. He did not attempt to give any opinion as to the value of the properties for rate making purposes. He undertook to place a value on the properties "as evidenced by the securities for exchange purposes only" (R. 300). He "did not reach any conclusion as to the value of the physical property of Atlanta, Birmingham & Coast" (R. 300)—neither lands, nor rails, nor equipment, nor physical property of any kind. He is not an engineer. He gave no consideration to the reproduction cost except as stated in the Commission's final valuation of 1914 (R. 301). He admitted that in the issuance of securities by railroads the value of the properties back of those securities is an element to be taken into consideration (R. 301). He considered that only as he considered the valuation as fixed by the Commission, without any attention to the values of 1927 as to the physical properties (R. 301). His whole opinion is based on the record of the proceedings in Dockets Nos. 5454 and 5470 (117 I. C. C. 181, 439; 158 I. C. C. 6). He has taken into consideration, therefore, none of the matters and things developed at the hearing in Docket No. 25170 (201 I. C. C. 401, the present case). That is, he had before him none of the evidence given by the witnesses Edwards, Willoughby, Bugg and Bell, to which reference has been herein made. He has taken no account whatever of the difference in valuations in 1927 as compared with 1914 (R. 300). He determined the value of the property was not more than

$9,395,075 (R. 283, 301). He admitted (R. 280, 281) that prospective earnings of a property are always to be considered in granting certificates by the Interstate Commerce Commission. Mr. Boles simply announces that the Atlantic Coast Line could have bought this property for $9,395,075 in cash (R. 288). Apparently this is based on the use of the par value of the preferred stock plus the amount paid out by Atlantic Coast Line for the prior debts, taking into consideration its acquisition of 384 shares of preferred stock (R. 288, 301), and eliminating the valuation by the Commission as of June 30, 1914, and every other element of value. In other words, Mr. Boles does just exactly what the District Court said should not be done. He undertakes to put what he considers to be the cost of this property as the measure of the rights under Accounting Rule No. 41, and under the decision of the court in *Atlanta, Birmingham & Coast Railroad Company v. United States,* 28 Fed. (2d) 885, it was held that value and not cost should determine the entries as to investment in road and equipment. The court also determined that:

> "We do not think this valuation is fixed either by the value of 1914 made by the Commission, or what the Coast Line Company was willing to pay and assume, though both may be matters immediately to be considered in making a fair valuation."

He then proceeds to show that such consideration as he gave to that valuation was perfunctory. He did not consider the values of 1927 as to physical property. He did not consider any of the values of any of the physical property of the carrier separately and apart, as separate items. He did not reach any conclusion as to the value of the physical property of the Atlanta, Birmingham & Coast. Such consideration

as Mr. Boles gave to the valuation fixed by the Commission was on some theory not disclosed which amounted to no purpose whatsoever. He makes this admission (R. 293):

> "The line was needed to round out the system of the Atlantic Coast Line, particularly for traffic between Florida and Atlanta and points beyond. The Atlantic Coast Line had its lines to the west and northwest in connection with its affiliated lines through Montgomery and through Spartanburg. The line of the Atlanta, Birmingham & Atlantic afforded a more direct route and a more economical route for part of the traffic that could be handled over these other lines. The Seaboard Air Line had announced its plan of connecting up its Florida lines with Atlanta. *The Atlantic Coast Line must acquire the Atlanta, Birmingham & Atlantic or otherwise provide a more direct route from Florida to Atlanta, to preserve its competitive status with the Seaboard Air Line.*" (R. 293; italics added).

Mr. Boles then makes this statement:

> "*Another inducement for acquiring control of the properties was the possibility of holding to its own lines all traffic to and from points served by the Atlanta, Birmingham & Atlantic from and to points reached by the Atlantic Coast Line and its affiliated lines, and competitive territory beyond those points.*" (R. 293).

That statement is correct. He emphasizes that in his next statement:

> "*Losses of the Atlanta, Birmingham & Atlantic in handling traffic might well be more than made up in operating savings and in profits to the Atlantic Coast Line and its other affiliated lines, or even by the Atlantic Coast*

Line holding to its system lines the traffic it then had, especially in face of improved service of its rival systems, the Southern and the Seaboard Air Line." (R. 293).

That statement is correct and is important. He leaves out, however, other lines not mentioned in his testimony which could be turned into a competitive system. It does not fully express the poverty of the Atlantic Coast Line as to its traffic moving from Florida to the West through Atlanta. Without the Atlanta, Birmingham & Coast Railroad Company, the Atlantic Coast Line's system was at the mercy of other carriers, not only as to service, exchanges, and competition, but also as to divisions. Its two great wings were disconnected and a system of 14,500 miles of road was incomplete.

This part of his evidence should be read in connection with Colonel Bugg's testimony beginning at page 267 and running through page 269 of the Record, set out elsewhere in this brief. It shows that if the Atlantic Coast Line should be without the control of the Atlanta, Birmingham & Coast, a great volume of traffic out of the Florida territory towards the west, then handled by the Atlantic Coast Line, would be at the mercy of circumstances beyond its control; and that this was effectively removed by the ownership of the controlling stock of the Atlanta, Birmingham & Coast Railroad Company.

Colonel Bugg then testified that it was within the power of Atlantic Coast Line to have influenced to the Atlanta, Birmingham & Coast Company traffic sufficient to have made the net income of that property 5¾ per cent. on more than the valuation sought in this case. He also testified that the Atlantic Coast Line had not made this diversion of traffic to Atlanta, Birmingham & Coast Railroad Company, because in his opin-

ion, "traffic relations of greater value have been preserved to the Atlantic Coast Line Railroad and its affiliated roads by the course pursued." This testimony is to the effect that the traffic relations which had been preserved had a value not *equal* to 5¾ per cent. upon the valuation now sought for the Atlanta, Birmingham & Coast property, but a return on a value greater than that sought here.

Turn back now to page 293 of the Record where the witness Boles admits:

> "Losses of the Atlanta, Birmingham & Atlantic in handling traffic might well be more than made up in operating savings and in profits to the Atlantic Coast Line and its other affiliated lines, or even by the Atlantic Coast Line holding to its system lines the traffic it then had," etc.

Notice that Colonel Bugg's testimony and Mr. Boles' testimony in this case come to the same point, except that Colonel Bugg carries his statement as to the value of the Atlanta, Birmingham & Coast Railroad Company's property to the Atlantic Coast Line Railroad Company to a more definite conclusion than does Mr. Boles. The difference between these two witnesses is that Mr. Boles recognizes the existence of the element of value in this property, but refuses to give it effect. He refuses to give effect to the physical value of the property, for he has taken no account whatever of its mileage, its track, its terminals, its bridges, its gradings, its ballasts, its buildings, or its equipment. He has, in effect, given no consideration whatsoever to the valuation placed upon the property by the Commission as of June 30, 1914. He has given consideration to only one of many elements which must be considered, and that is, what the Atlantic Coast Line paid

the purchasing committee (Roosevelt and Fowler) to enable them to deliver the property to the Atlanta, Birmingham & Coast Railroad Company free of liens.

To eliminate the element of value which brought about the transaction and which made this property attractive and necessary to the Atlantic Coast Line's system is just as wrong and unfair as it is to eliminate the value of the physical properties. It is as though this witness had undertaken to value a bar of gold, and in doing so, had eliminated the quality of the metal. This element of value to the Atlantic Coast Line's system which he refuses to value is that which this Commission has said is the first step in the re-creation of the Atlantic Coast Line's system.

His evidence concedes the need of this property to the Atlantic Coast Line's system, and then fails to value that need, and fails to consider a reproduction cost for this property thus acquired by the Atlanta, Birmingham & Coast Railroad Company. He realizes that this property had a value to the Coast Line in holding to its system's lines "the traffic it then had" (R. 293); but he gives no value to this. Yet, it is one of the great elements of value possessed by the property.

At Record 296 Mr. Boles says:

> "The record seems clear that the consideration given by the Atlanta, Birmingham & Coast for the properties consisted of the preferred stock and the cash paid on its behalf by the Atlantic Coast Line."

He then adds:

> "The Atlanta, Birmingham & Coast did not issue its common stock in part consideration of the properties, nor did it receive any part of the properties in consideration

of the issue of its common stock to the Atlantic Coast Line."

The difficulty about that is, it is incorrect as a matter of fact under the Record in Dockets Nos. 5454 and 5470, on which he appears to have relied. It is much more certainly and clearly incorrect under the evidence adduced in this case. It has been ascertained by the United States District Court for the Northern District of Georgia on two occasions to be incorrect. After the first decision by that court, hereinbefore referred to and reported in 28 Fed. (2d) 885, the Commission appeared to proceed as though that finding was to be given no effect; and the court in the second case hereinbefore referred to and reported in 37 Fed. (2d) 401 adhered to and reaffirmed its original opinion.

This evidence on the part of Mr. Boles shows on what impossible theories his conclusions are based.

The Atlantic Coast Line did not provide, as he testified at Record 296, to the New Company the cash to pay off the claims against this property. It was provided to the *purchasers who received or were entitled to receive the* 150,000 *shares of common stock in consideration* (*with the preferred stock*) *of their conveyance of this property to the New Company.*

Mr. Boles' proposed valuation of $9,395,075 is to be compared with Colonel Bugg's valuation of the terminal properties only of the Atlanta, Birmingham & Coast Railroad Company. He values those at $6,000,000 to $8,000,000.

THE COMMISSION'S FINDING OF VALUE.

This is found at R. 60 and is as follows:

"We find that the *market or fair cash value* of the properties in question did not exceed the sum of $9,428,713.76." (201 I. C. C. 645, at 671; Italics added).

This finding is, of necessity, erroneous. It eliminates the following elements of value:

(1) Value for rate-making purposes;

(2) Cost of reproduction;

(3) The property's strategic value;

(4) Its relations to the Atlantic Coast Line and the Louisville & Nashville's Systems.

We assert that neither the "market" nor "fair cash" value of a property can be ascertained if any one of the above-mentioned elements is overlooked. Let us analyze this:

Value for rate-making purposes: The basis of all calculations as to the reasonableness of rates to be charged by a common carrier by railroad "must be the fair value of the property being used by it for the convenience of the public." This required a consideration of at least the following items: The length of mileage; cost of right-of-way; the terminals; number of bridges and their cost; the rails, their weight, how they are laid and their cost; the cross-ties and the laying of them; the grading of the right-of-way; the construction and necessary buildings; labor to be used in the construction; and many other items. But the ones which have here been mentioned must, of necessity, be taken into consideration in ascertaining the value of a railroad property; yet no one of those items has been considered by the Commission in determining the value of the property in this case.

Reproduction cost: The property which was to be valued in this case was not new. The books of account did not have a record of the entire cost. The south end of the property was assembled in several units of railroads already constructed. This element should certainly have been taken into consideration in this case. It was three times sworn, once by Mr. Willoughby, then by Colonel Bugg and then by Mr. Edwards, that if the Atlanta, Birmingham and Coast Railroad had not been built it should now be built. It is difficult to see how any attempt could have been made to ascertain the value of this property without considering the cost of reproduction.

Strategic value: No sort of allowance is made by the Commission for this element of value in this case, although the Interstate Commission (63 I. C. C. 455), at 543 had stated that the property in its opinion had "a very considerable value" because of its relations to the larger systems round about, particularly the Atlantic Coast Line Railroad and the Louisville and Nashville Railroad. The fact that this property was needed by the Atlantic Coast Line and the Louisville and Nashville to round out their systems has been noted by the Commission, and yet this important element of value to this property was eliminated by the Commission in its report now under consideration.

The "market" or "fair cash" value of a property is not a detached thing. There is no such thing as a "market" value for railroads taken as a whole as this was. There is no market place for railroads. The "fair cash" value can not be measured in a detached way. One can discard no relevant element in ascertaining the value of a railroad property.

We quote from a dissent in the case of *Southwestern Telephone Company v. Public Service Commission*, 262 U. S. 276, at 292 (the dissent is written by Mr. Justice Brandeis, concurred in by Mr. Justice Holmes):

> "It is impossible to find an exchange value for a utility, since utilities, unlike merchandise or land, are not commonly bought and sold in the market."

This property was in reality earning a substantial return upon the value sought to be set up in this case. It was, according to the evidence, preserving to the Atlantic Coast Line Railroad Company traffic which was of greater value to it than having the traffic transported over the lines of the Atlanta, Birmingham and Coast although the earnings from such traffic would have been sufficient to have made 5¾ per cent. return upon the value of this latter company.

The Course Pursued by the Commission Will Produce an Impractical Result.

In the first place the value to be entered upon the books of Atlanta, Birmingham and Coast Railroad Company in accordance with the Commission's report and order of July 9, 1934 (201 I. C. C. 645) will be only what the Commission calls the "market or fair cash value" of the property as of January 1, 1927. It is not intended to be, as has been pointed out, the rate-making value. The Commission's valuation is one which can be of no good to anybody but which can be of harm to everybody connected with the ownership of this property.

The results of the valuation proposed by the Commission will not stand analysis. The Commission's course will pro-

duce a value of the property at the sum of $9,428,713.76 as of January 1, 1927. That means a valuation of every species of property owned by the Company whatever it may be and wheresoever situated. Let us analyze this:

The current assets of the Company as of January 1, 1927, were $2,268,817.73 (R. 213). In our efforts to find the value of the road and equipment let us subtract that sum from the $9,428,713.76. The result is $6,729,896.03. This figure will represent the alleged value of road and equipment. The equipment is valued as of January 1, 1927 (Exhibit 9, R. 193, 210, 223) at $2,999,776.05. This figure is referred to in the evidence as being $3,000,000. We will subtract that $3,000,000 from the $6,729,896.03 representing road and equipment as above stated. That means that the road itself is to be valued at $3,729,896.03. This road is described to some extent by the Witness Bugg at record pages 235, 241 and 267.

It has 640 miles of main line, it has terminals in the cities of Atlanta, Georgia, Birmingham, Alabama, and Brunswick, Georgia. Each of these terminals is of substantial value. The terminals at Atlanta and Birmingham were valued by Colonel Bugg as of January 1, 1927, at $6,000,000 or $8,000,000 (R. 267). These terminals taken at the smaller of those two valuations—$6,000,000—are worth about 160 per cent. of the amount above set out which is left for the road. That will leave less than nothing for the 640 miles of main line and the Brunswick terminal. Colonel Bugg made some itemization of the cost of some of the important items involved in this road at R. 267. He testified that the steel and concrete bridge alone, at 1927 prices, were worth $2,166,378;

the cross ties in the track at current 1927 prices were worth 2,852,348;

the rail, at relay and second hand price, with suitable allowance for scrap and scrap prices was worth 2,016,524;

the carrier land alone, exclusive of Atlanta and Birmingham, at normal values of January 1, 1927, was worth 1,779,709

That means that there is no worth given to these items which were in place in this railroad on January 1, 1927, and which had a value of $8,814,959 besides the under-valuation of the other items referred to above.

It must be taken into consideration that the year 1926 was the year of the heaviest railroad earnings which the Southeastern States ever had and probably which this country ever had. The Atlantic Coast Line's gross revenues for that year were about $96,000,000 and the gross revenues of the Coast Line and its affiliated properties were about $308,000,000. (R. 268). It was within the power of the Atlantic Coast Line and its affiliates to control or influence traffic to the Atlanta, Birmingham and Coast Railroad Company on January 1, 1927, which Colonel Bugg states, would have been sufficient to have made the net income of the Atlanta, Birmingham and Coast Railroad Company 5¾ per cent. on more than the valuation now sought for its property—$24,010,135.47.

There should be no serious effort to have such an impractical and unjust result perpetuated in the law.

DISCUSSION OF THE LAW

We have argued in the foregoing part of this brief that the Commission in providing for the valuation of this property dealt with only its "market" or "fair cash" value, and that it recognized the difference between that value and a value for rate-making purposes; and that the Commission omitted other elements which certainly should have been taken into consideration in ascertaining the value of this property, including reproduction cost, its strategic value including the need of the Atlantic Coast Line and the Louisville and Nashville Systems.

We submit that the value of this property is not correctly stated. The value is fixed for accounting purposes. The fact that the report is so limited has been hereinbefore discussed. This requires us to take note of the purpose of accounts for railroad purposes.

The Purpose of Accounts.

In *Kansas City Southern Railway Co. v. United States*, 231 U. S. 423, Justice Pitney, at page 440 of the opinion, states:

> "The very object of a system of accounts is to display the pertinent financial operations of the company and throw light upon its present condition. If they are to properly do this, the form must correspond with the substance."

A system of accounts should as far as possible reflect information useful and usable for the following purposes:

(1) *Fair returns.*

It is contemplated by Section 15a, subsection 2 of the Interstate Commerce Act that the carrier shall have a fair return

upon the aggregate value of its railroad property. It is apparent that books kept in accordance with the order of the Commission here involved will be worse than useless as to this.

(2) *Evidential value of books.*

Subsection 5(i) of Section 19a contemplates that the property investment account of the carrier shall have evidential value. If the Commission's order here involved prevails, that evidential value will be inconsistent with the facts, will contribute to injustice, and will be contrary to this section of the Interstate Commerce Act.

(3) *Credit standing.*

The carrier's accounts should properly reflect its condition so as to enable it to procure for itself its best credit standing. The books of the Atlanta, Birmingham & Coast Railroad Company, kept according to the Commission's order, will not be helpful to credit standing, but will be destructive of it.

(4) *Taxation.*

The books of the carrier should reflect the value of its property which is considered in determining the amount of the taxes it pays or any other method to which value is material. Appellant's books, if kept pursuant to the Commission's order, would produce results unjust both to the carrier and to the public in such matters of taxation.

(5) *Stockholders.*

The condition of the books should properly reflect the status of the carrier to its stockholders. In this case, should the Commission's figures as ordered be entered in Appellant's books, this purpose would be defeated.

(6) *Property investment.*

The property investment account of the carrier should be of great value to it, especially so when kept consistently with the provisions of Section 19a of the Act.

The *Kansas City Southern Railway* case, supra, evidently contemplates that this account is to be given substantial weight in reflecting the value of the property used in the public service. The value of property used in the public service is, of course, of great importance in determining the reasonableness of rates. The property investment account of appellant, kept pursuant to the Commission's order, would not only make the investment account valueless but actually speak in terms of value which have no relation to the physical property itself.

(7) *Depreciation.*

A correct property account is necessary to the depreciation contemplated by Section 20, subsection 5 of the Act. Unless this account be kept to represent "Present fair value" of the depreciable property, the account will be worse than useless. See *United Railways v. West*, 280 U. S. 234, 254, it is impossible for appellant, pursuant to the Commission's order, "to make full, true and correct entries in such accounts, records or memoranda of the facts and transactions appertaining to the carrier's business," as is required by Section 20, subsection 7 of the Act.

There is no way of ascertaining what is the fair cash value of a property without considering the elements which make value.

REPRODUCTION VALUE.

The Commission's report (201 I. C. C. 645) at 670 states:

> "Clearly, the only pertinent value is that for purposes of sale or exchange. Cost of reproduction is to be given little, if any, weight in determining such value in the absence of evidence that a reasonably prudent man would purchase or undertake the construction of the properties at such a figure."

As we have pointed out, there were three witnesses who testified in this case that the property of Atlanta, Birmingham and Coast Railroad Company should be built now if it were not already in existence. This brings one to this thought:

The books which the Company is to keep under the order of the Commission in this case, may be looked upon as giving information for one purpose and one purpose only; that is the "fair cash value." That is a thing which changes from day to day. Under the plan of the Commission when one looks to the books for a rate hearing they would show nothing, though it is clearly contemplated by the law that they should be of value for such purpose. If you were to use the books as the basis for establishing credit they would be worse than useless and as stated by the witness Bell the first thing one would be required to do in such circumstances "would be to prove our books were not true." (R. 194). The books could not be used to show either the present value or the future value of the property. They would contain nothing to show what the property had cost to construct. In fact, they would be useless for every purpose for which books can be useful. It is not conceivable that the law requires books to be kept for one purpose but which can not be relied upon for two purposes or for any other purpose.

The books should be kept so as to aid and not prevent constitutional rights. The Atlanta, Birmingham and Coast Company has a constitutional right to a fair return on the value of its property used in the public service, in the manner and to the extent determined by frequent decisions of this Court, including *Willcox v. Consolidated Gas Company*, 212 U. S. 19, 20; *Smyth v. Ames*, 169 U. S. 466; *Southwestern Telephone Co. v. Public Service Commission*, 262 U. S. 286, 287, and Minnesota Rate Cases, 230 U. S. 352, 454.

The Commission by its order before the Court in this case has undertaken to deprive the carrier of the right to keep its accounts and records in such manner as will be necessary to prove the value of its property in controversies concerning rates, returns, credit and accounting matters. The carrier must swear to the correctness of its reports rendered to the Commission; and when it undertakes to prove another value for rates, etc., it will be presented with this value ordered by the Commission and sworn to by the Company.

An order of the Commission which brings about such results is necessarily arbitrary and it appears to us, to be equally unlawful.

PASSAIC CONSOLIDATED WATER CO. v.
BOARD OF PUBLIC UTILITY COMMISSIONERS
139 ATL. 324, 141 ATL. 921 (104 N. J. L. 666).

This case involved an order of the Public Utility Commissioners of New Jersey affecting the accounts of Passaic Consolidated Water Company. There was a consolidation of five companies had on October 26, 1923. On March 7, the Com-

mission had fixed the value of the property of those companies at $11,500,000 of which $300,000 was designated as working capital.

> "The Board in its approval of the consolidation directed that the books of the prosecutor should be opened on the basis of consolidated book costs, as shown in an exhibit referred to in said proceedings as Exhibit P-2. This exhibit fixed the valuation of the plant and working capital at the figures hereinbefore mentioned."

The Water Company opened its books on the basis of the consolidated book costs as of December 21, 1922, continued to the date of the merger, which was November 1, 1923. In its annual report for the year ending December 31, 1924, it used a different set of figures. In these figures the amount of fixed capital was of December 21, 1923, entered at $23,170,398, and after deducting depreciation reserve set up as a liability, it set up a net amount as fixed capital of $20,209,714. This was done as the result of an appraisement made by an expert in the valuation of public utilities. The Board objected to these figures and entered an order requiring that the books of account be conformed to the decision of the Commission of October 26, 1923, approving the consolidation, and to modify the charges made for depreciation, to rewrite its books of accounts and upon approval of the amended annual report the Water Company was not to set up other or different bases of fixed capital than that so approved. The court set aside this order of the Commission, holding:

> "Upon the regulation of a public utility corporation by a board of public utility commissioners, all the incidents of ownership, except in so far as it may be necessary to curtail them to properly exercise the power of regulation, remain with the corporation."

The court also held:

"The right to regulate a utility does not destroy the right of private ownership."

"All the incidents of ownership, except in so far as it may be necessary to curtail them to properly exercise the power of regulation, remain with the corporation. If the order of the board is arbitrary and unreasonable and beyond the powers given to it by the statute, it is void. It seems to us that one of the rights of private ownership is the keeping of accounts, not solely for the purpose of establishing a basis for fixing rates, but for such other matters as appertain to the ordinary business of a utility corporation. It owes to its stockholders certain rights that may require an entry upon its books of what it determines to be the fair value of the property. It must be recognized that when a board is fixing a basis for rates it may perchance mistakenly undervalue the property of the utility or eliminate from the valuation elements which in the past have required the expenditure of considerable funds.

"In ascertaining the income and excess profits upon which taxes have to be paid to the federal government, for example, it is fair that the full value of the property should be used. To use it requires that such a valuation shall be entered on the books of account. In the event of the sale of any of the company's property for which it has no longer use, there should be a record of the true value of such property. These illustrations might be multiplied. They are only used for the purpose of showing that in the conduct of the affairs of a corporation questions regarding its property will arise which require that there be entered upon its books other entries than that of the valuation fixed by the utility board for rate-making purposes."

We respectfully submit that this case is precisely in point and that its expressions are entirely in accord with the opinion of this court in *Kansas City Southern Railway case*, 231 U. S. 423, 449.

We further call attention to the case of *People ex rel. Iroquois Gas Corporation v. Public Service Commission of New York* (1934) 189 N. E. 764 (264 N. Y. 17). This case is very much the same as the Passaic Consolidated Water Company case.

THE COMMISSION'S CONSIDERATION OF THE EVIDENCE IN THIS CASE.

We do not contend that either the trial court or this Court should consider the evidence before the Commission anew; that is, that it should determine the conflicts of evidence. There are no conflicts of evidence in this case.

We do contend that the courts have the right to determine whether the Commission made proper application of the evidence before it; whether it applied correct principles in the weighing of the evidence; and as to whether or not there was any evidence to support the finding of the Commission. The same statute which gave appellant the right to a full hearing and conferred upon it the privilege of introducing testimony

> "at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless." *Interstate Commerce Commission v. L. & N. R. R. Co.*, 227 U. S. 88, 91.

Continuing to quote from that case:

> "And if the Government's contention is correct, it would mean that the Commission had a power possessed

by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence. . . . or, if the facts found do not, as a matter of law, support the order made." The court cites:

United States v. B. & O. S. W. R. R., 226 U. S. 14;

Atlantic C. L. v. North Carolina Corp. Com., 206 U. S. 1, 20;

Wisconsin, M. & P. R. R. Co. v. Jacobson, 179 U. S. 287; 301;

Oregon Railroad v. Fairchild, 224 U. S. 510; and

Muser v. Magone, 155 U. S. 240, 247.

It is held in *Interstate Commerce Commission v. Illinois Central Railroad Company*, 215 U. S. 452, at 470:

"Beyond controversy, in determining whether an order of the Commission shall be suspended or set aside, we must consider, *a*, all relevant questions of constitutional power or right; *b*, all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have

been made; and, *c*, a proposition which we state independently, although in its essence it may be contained in the previous one, viz., whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it, in truth, to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. *Postal Telegraph Cable Company v. Adams*, 155 U. S. 688, 698. Plain as it is that the powers just stated are of the essence of judicial authority, and which, therefore, may not be curtailed, and whose discharge may not be by us in a proper case avoided, it is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised."

This Court has in other cases stated the relative fields of the Commission and of the Courts in a contest over an order of the Commission. We cite. *I. C. C. v. Union Pacific Railroad*, 222 U. S. 541, 547; and *Chicago Junction Case*, 264 U. S. 258.

See also *West v. Chesapeake & Potomac Telephone Company*, decided June 3, 1935, Law Ed. Vol. 79, page 948.

The Commission in this Case Erroneously Applied a Basis of Valuation Different from that Which It Would Have Applied in a Reorganization Case

At page 299 of the record the Commission's witness Boles testified:

"The practice in reorganization has been somewhat different from the practice in cases of acquisition by a new company of properties of an old company, where the security holders of the old company had no interest in the new company; that is, where the control of the new company passed to someone other than the security holders of the old company."

The witness continues and gives instances which come, in substance, to this:

That if an old company be reorganized, regardless of the manner of the reorganization, and the property is acquired by a new company and the new company is owned by substantially the same persons and in the same interests as the old company, then the valuation of the old company can be brought forward on the books of the new company.

In the case at bar, the bondholders of the Old Company (Atlanta, Birmingham & Atlantic Railway Company) became interested in the New Company (Atlanta, Birmingham and Coast Company) each on the same basis and to the extent that the bondholders of the Old Company received all of the preferred stock of the New Company. There was no provisions made in the plan of reorganization for the protection of the stockholders of the New Company. This has been treated as a basis for greatly decreasing the capitalization of the New Company. We submit that this was not a proper basis of depriving the New Company in this case of the benefits of the value of its property.

It would appear that the ownership of the securities should not affect the value of the properties for which those securities stand.

The ownership of the securities certainly should not affect either the market value or the fair cash value of the properties owned by the Atlanta, Birmingham and Coast Railroad Company.

The Commission offered no witness except Mr. Boles. The evidence given by him and above referred to was not contradicted.

This, if there were no more, would appear to us to make the decision of the Commission in this case as to the value of the property of Atlanta, Birmingham and Coast Railroad Company completely erroneous.

Upset Price of this Property at the Foreclosure Sale.

The Commission in its report refers to the fact that the upset price of this property at the foreclosure sale was $2,500,000 (R. 33). It also refers to the fact that there was only one bid for the property which was $4,500,000 (R. 34) and that the purchasers bought the property on behalf of the Reorganization Committee. As pointed out above, a railroad is rarely ever a subject of competitive bidding at a foreclosure sale. Such sales are wasteful and inefficient methods of readjusting the affairs of a railroad. This has been recognized not only by this Court but by Congress in its recent enactments for the reorganization of railroads.

In *Northern Pacific Railway Company v. Boyd*, 228 U. S. 482, 483 recognition of this fact was made and the court said:

> "The fact that property of great value belonging to an insolvent corporation is bid in by the reorganization

committee at the upset price fixed by the court at a judicial sale, cannot be used as evidence to disprove the recital as to its actual and far greater value when subsequently transferred by the reorganization committee to the new corporation."

Each basis upon which the Commission has undertaken to found its report falls with the slightest analysis.

THE FINDINGS OF THE COMMISSION ARE WITHOUT SUPPORT IN THE RECORD.

The basic intermediate findings of the Commission are not supported by the evidence and do not appear in the report of the Commission. The ultimate decision, that is, the final single sum value of the properties, $9,428,713.76, as of January 1, 1927, is not supported by essential intermediate findings and is arbitrary and capricious. Compare *Florida v. United States*, 282 U. S. 194, 215.

CONCLUSION.

The decree of the trial court dismissing appellant's bill and upholding the order of the Commission here involved is erroneous and should be reversed by this Court.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 9

ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, appellant

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted District Court is incorporated in its final decree (R. 339–341) and is not reported. The report of the Interstate Commerce Commission (R. 27–61) is reported in 201 I. C. C. 645.

JURISDICTION

The final decree of the District Court was entered December 14, 1934 (R. 339). Petition for

appeal was filed February 11, 1935 (R. 342) and allowed on the same day (R. 346). The jurisdiction of this Court rests on the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C., Title 28, Sec. 47, and U. S. C., Sup. VII, Title 28, Sec. 47a), and Sec. 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Sup. VII, Title 28, Sec. 345).

QUESTIONS PRESENTED

The questions presented are:

(1) *Appellant's standing to object.*—Whether appellant has any standing to object to the construction which the Interstate Commerce Commission has placed upon a condition (respecting accounting entries) attached to an order, granting appellant authority to issue stock pursuant to a plan of reorganization, where appellant with knowledge that the Commission so construed the condition, accepted the benefits of the order by fully executing the transactions which it permitted, without disputing the authority of the Commission to impose the condition.

(2) *Propriety of Commission's construction of condition and accounting rules.*—Whether the Commission in issuing an order prescribing the maximum amounts which appellant might record in its balance sheet for "Capital Stock" and for "Investment in Road and Equipment" properly construed its applicable accounting rules and a con-

dition requiring compliance therewith, which the Commission had attached to a prior order granting appellant authority to issue stock.

(3) *Sufficiency of the evidence, even on appellant's construction.*—Whether, if the fair cash value of the railroad properties which appellant acquired under a plan of reorganization is material to a determination of the proper entries to be made in the foregoing accounts, the Commission's finding that such cash value did not exceed a designated amount is supported by substantial evidence.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, *infra*, pp. 52–57.

The provisions of the Act, pursuant to which the orders of the Commission here involved were issued, may be briefly summarized as follows: Sections 20a (2) and (3) make it "unlawful for any carrier to issue any share of capital stock" except upon an order of the Commission authorizing such issue after application and investigation and upon findings of public interest and necessity and empower the Commission to grant or deny such applications in whole or in part or to grant them "with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises." Sections 20 (1) and (5) authorize the Commission "to prescribe * * * a uniform sytem of ac-

counts, * * * the manner in which such accounts shall be kept", and "the forms of any and all accounts."

STATEMENT

This is an appeal from a decree of the District Court for the Northern District of Georgia dismissing appellant's bill of complaint in an action brought to enjoin and annul an order of the Interstate Commerce Commission prescribing the maximum amounts at which appellant might record in its balance sheet its liability for no-par common stock and its investment in road and equipment. An earlier proceeding before the Commission growing out of the same controversy was involved in *United States* v. *Atlanta, B. & C. R. Co.*, 282 U. S. 522, and the opinion in that case contains a brief description of the facts prior to the proceeding before the Commission which led to the order now under attack.[1]

The appellant in January 1927 acquired title to the property formerly owned by Atlanta, Birming-

[1] By stipulation (R. 330–333) substantial portions of the record before this Court in the earlier case were made part of the evidence in the proceeding before the Commission which led to the present report and order. The entire record of the earlier case was in evidence in the District Court and is part of the record now before this Court (R. 350), but only certain portions (R. 73–155, 356–357) are included in the printed record. For convenience, where reference is made to any part of the record in the earlier case which is not reprinted in the present record, the reference will be made as follows: Ex-R.

ham & Atlantic Railway Company (hereinafter called A. B. & A.), as a result of a reorganization of the latter company which was effected pursuant to an agreement made on February 23, 1926, between committees of the bondholders of A. B. & A. and the Atlantic Coast Line Railroad (R. 30–31, 73–83, 4–5). This property had throughout nearly its entire history been involved in financial difficulties and it "had been peculiarly disastrous to investors." *United States* v. *Atlanta, B. & C. R. Co., supra,* p. 524.

Appellant's predecessor, A. B. & A., had become owner of the road in 1915 under a reorganization following a receivership dating from 1909, during which the property had been operated at a deficit. (R. 30; Ex–R. 176–177; see *Valuation of Atlanta, Birmingham & Atlantic R. R. Co.*, 75 I. C. C. 645, 647, 701, 706.) In the 1915 reorganization $35,000,000 in stock and $14,500,000 in bonds were wiped out (Ex–R. 177), and A. B. & A. took the property subject to an old mortgage of $4,090,000, issued approximately $4,500,000 of new income bonds (to the holders of receivers' certificates), and issued and sold 300,000 shares (par value $30,000,000) of stock to the public for $8,600,000 (R. 30, 245–246; Ex–R. 164, 177). Including the old mortgage, the actual investment in the road at this time was consequently only some $12,190,000 (R. 30, 245–246).

In 1921 the road was again placed in receivership (R. 30; Ex–R. 177). No dividends were ever paid